

BY THE COMPTROLLER GENERAL

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# Report To The Congress

## OF THE UNITED STATES

### Military Discharge Policies And Practices Result In Wide Disparities: Congressional Review Is Needed

The military services characterize a member's service by the type of discharge imposed at separation. Different philosophies and practices among the services for imposing and upgrading discharges have led to wide disparities, which erode the integrity of the system.

Therefore, the type of discharge may have little to do with the former service member's performance on active duty. Many with less than fully honorable discharges may have better service records than others with fully honorable discharges. Yet these judgments are used to differentiate among former service members, usually without further review.

This report discusses these problems and makes recommendations to the Secretary of Defense. The Congress should also consider the problems discussed and decide the future of the services' characterization and separation systems.



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WASHINGTON, D.C. 20548

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To the President of the Senate and the  
Speaker of the House of Representatives

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The military departments characterize the service of each member by the type of discharge imposed when the individual is separated. The current system of discharges was adopted by the Department of Defense in 1947, but each service has developed and implemented its own philosophies and practices. As a result, people with similar service records are getting different types of discharges.

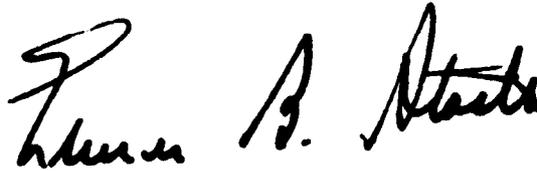
The most favorable type of discharge--the honorable--should be reserved for honest and faithful service but is awarded to many persons discharged for reasons indicating they were not successful. However, less than fully honorable discharges have potentially severe consequences for the recipient in civilian society which are not intended. Most of those receiving them are young and less educated and may have better service records than other individuals with honorable discharges.

The House and Senate Committees on Appropriations have expressed concern about the disparities in the types of discharges awarded and have recommended that the Secretary of Defense standardize the basis for the honorable discharge across the services. However, a recent Department of Defense study group concluded that the services' discharge systems, while needing improvement, should remain in basically their present form. AGC00005

The honorable discharge should be reserved for members whose performance is truly superior. The Congress should consider changes to the discharge system to reduce the disparities in discharges imposed. We also make recommendations that would help protect the service members from unwarranted separation while making the separation system more efficient and less costly.

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USMC AGC000098  
USN AGC000001  
USA AGC000020  
CG AGC000164  
T.M. AGC000029

Copies of this report are being sent to the Secretaries of Defense, the Air Force, the Army, the Navy, and Transportation (Coast Guard); the Administrator of Veterans Affairs; the Directors, Office of Management and Budget, and Office of Personnel Management; members of the congressional subcommittees on military personnel; and other interested parties.

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Comptroller General  
of the United States

COMPTROLLER GENERAL'S  
REPORT TO THE CONGRESS

MILITARY DISCHARGE  
POLICIES AND PRACTICES  
RESULT IN WIDE DISPAR-  
ITIES: CONGRESSIONAL  
REVIEW IS NEEDED

D I G E S T

The military passes judgment on a large segment of the U.S. population through the type of discharge imposed at separation. Over the last quarter of a century, almost 21 million service members have received one of three administrative discharges--"honorable," "general (under honorable conditions)," or "under other than honorable conditions." (See p. 1.)

Characterizing military service is rooted in military tradition and is implicitly recognized in Federal statutes. Most service members receive fully honorable discharges. However, 1.5 million have received less than fully honorable discharges since 1950. (See pp. 1 and 2.) The percentage of former service members separated with less than honorable administrative discharges has been increasing, compared to the percentage imposed by court-martial. (See pp. 63 to 66.)

Present separation practices are inefficient and costly and result in wide disparities in discharge characterizations within and among the services. The subjective nature of the present system makes achieving a high degree of standardization in the discharges imposed difficult. (See pp. 16 to 18 and 22 to 23.) Debate over the equity of the services' separation practices will continue to the extent that different people get different discharges for similar reasons because less than fully honorable discharges stigmatize the recipient and hurt opportunities for veterans' benefits and civilian job opportunities. (See pp. 52 to 58 and 70 to 73.)

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Comptroller General  
of the United States

RECIPIENTS HAVING LESS THAN FULLY  
HONORABLE DISCHARGES ENCOUNTER  
PROBLEMS IN CIVILIAN LIFE

Less than fully honorable administrative discharges--general and under other than honorable conditions--have potentially severe consequences for the individual. Many recipients of them encounter substantial prejudice in civilian life and are denied civilian job opportunities and veterans' benefits. (See pp. 45 to 49 and 52 to 55.) Additionally, the less educated and minorities receive a disproportionate share of less than honorable discharges. (See pp. 49 to 52.)

Less than fully honorable discharges increase the adverse connotation of an early separation from the service. In time, a poor job record can be overcome, but the type of discharge and the character of service remain with the individual throughout his life. (See p. 70.)

To meet end strength, the services accept individuals who have a low probability for success. Many receive less than honorable discharges. Recruiters do not routinely tell prospective service members the risk they run of being separated involuntarily with less than fully honorable discharges and the adverse connotations associated with them. (See pp. 38 and 39.)

Most of those receiving less than fully honorable discharges are separated involuntarily before the end of their initial enlistment and are young--age 20 or less. These discharges are frequently based on transitory behavioral patterns which may be due to immaturity or are given for crimes unique to the military society, such as absence without leave. Seldom are adverse administrative discharges based on serious criminal wrongdoing. Individuals often accept adverse discharges because they want to get out of the service and may not realize the potential long-term consequences of their decision. (See pp. 49 to 52.)

DISCHARGE DISPARITIES ARE  
SERIOUS AND LONGSTANDING

Several studies by GAO and the Department of Defense (DOD) have revealed disparities in the administrative discharges imposed within and among the services. Simply stated, different people get different discharges under similar circumstances, and the type of discharge an individual gets may have little to do with his behavior and performance on active duty. (See pp. 23 to 37.)

Historically, broad discretion has been given to those making separation decisions in the absence of definitive policy guidance. The problems GAO found indicate that reasonable consistency in the discharges imposed has never been achieved since the three-tiered administrative discharge system was adopted by all the services in 1947. (See p. 22.)

Commanders are given broad discretion in making separation decisions and in characterizing service. Such factors as disciplinary record, off-duty behavior, age, educational level, aptitude scores, eligibility for benefits, and the views of the commander can influence the reasons for separation and the type of discharge. (See pp. 5, 8 to 11, 32, and 76.)

In addition, each service has its own discharge philosophies and practices which affect the type of discharge. For example, the probability of people with similar absence-without-leave and conviction records getting honorable discharges in the Air Force is about 13 times greater than in the Marine Corps. (See pp. 29 to 33.)

The 1978 DOD Joint-Service Administrative Discharge Study Group attempted to deal with this dilemma--that is, how to reward honorable service without stigmatizing individuals separated because of factors beyond their control. The study group proposed to award honorable discharges to these individuals. (See pp. 37 and 46.) This proposal, however, would increase the number of honorable discharges awarded for reasons indicating lack of success. (See p. 72.)

The 1978 study group also proposed, partly on the basis of a prior GAO report, awarding an uncharacterized discharge to members separated during their first 179 days or on approval by the service Secretary. (See p. 37.) GAO's study indicates that to identify most individuals who are unsuccessful, a longer period is necessary. But, over 90 percent of those who receive less than honorable discharges receive them during their first obligated tour. (See pp. 1, 26, 33, and 34.)

GAO believes that not characterizing military service for an initial period would have considerable merit and allow the honorable discharge to be reserved for truly superior performance. This period should be the number of months necessary to identify most service members who are not suited for continued military service. While individuals separated without service characterization would have to overcome the consequences of not completing this initial period, they would not have the lifelong stigma of a general or under other than honorable conditions discharge. (See pp. 33 and 70 to 73.)

Any change authorizing an uncharacterized discharge would also require amendments to various laws and regulations that govern veterans' benefits administered by Federal, and State Governments. The Congress is considering legislation that would limit

CURRENT DISCHARGE PRACTICES  
ERODE THE INTEGRITY OF THE  
HONORABLE DISCHARGE

Issuing honorable discharges to individuals separated before the end of their enlistment for reasons indicating lack of success erodes the integrity of the characterization system. Yet this happens. In fiscal year 1977, the services gave honorable discharges to 70 percent of the members separated for marginal performance--performance which has not contributed to unit readiness and mission accomplishment. Of the 511,000 honorable discharges awarded in fiscal year 1977, more than 1 in 10 were given to members separated for reason of marginal performance, unsuitability, or misconduct. (See pp. 23 to 28.)

The Senate and House Committees on Appropriations recently expressed their concern that DOD's characterization system is not properly recognizing honorable service. These Committees made several recommendations to DOD, including standardizing the basis for awarding honorable discharges across the services. Enacting the Committees' recommendations has the potential to restore integrity and consistency to the discharge system but will result in greater percentages of less than fully honorable discharges. However, the subjective decisions that must be made to characterize service and the differences in service separation philosophies and practices will make achieving the standardization desired by the Committees difficult. (See pp. 22, 23, 43, and 72.)

Standardizing the basis of the honorable discharge will not alleviate the consequences of receiving a less than fully honorable discharge. This is particularly troublesome when service members are separated involuntarily for reasons beyond their control and receive general discharges. (See p. 72.)

ELIGIBILITY FOR AN ADMINISTRATIVE  
DISCHARGE BOARD HEARING DIFFERS  
AMONG THE SERVICES

When administrative discharge boards meet, they decide, on the basis of the individual's record, testimony, and the commander's recommendation, whether to separate or retain a service member. If the decision is to separate, the board will recommend a reason for separation and the type of discharge. (See p. 7.)

Only one out of every four members separated for adverse reasons during 1977 was entitled to an administrative discharge board hearing before the separation was finalized. Strict adherence to DOD guidance would have reduced this to one out of every five. (See p. 15.)

Only the Navy and the Marine Corps strictly follow DOD guidance. Both the Army and the Air Force authorize more hearings than the guidance suggests, with the Army being the most liberal. (See pp. 13 to 15.)

To more adequately protect the rights of members administratively and involuntarily separated, GAO recommends that the Secretary of Defense insure that all individuals (1) being separated for adverse reasons and (2) who may receive general or under other than honorable conditions discharges be given the option of a hearing before an administrative discharge board. The board should be empowered to establish, on the basis of the member's service record, whether prescribed procedures were followed in counseling and other rehabilitative efforts. In those cases where the reason for discharge will bar Federal veterans' benefits, except by reason of court-martial, the discharge must be reviewed by a board. (See pp. 20 and 21.)

DIFFERENCES IN UPGRADING  
CRITERIA CONTRIBUTE TO  
DISPARITIES

Only a small percent of eligible former service members have applied for a discharge

Federal veterans' benefits to those members who complete their initial obligated tour. If these proposals are adopted, the administrative need to characterize service for an individual's first tour of duty would be greatly reduced. (See pp. 57 and 58.)

#### MATTER FOR CONSIDERATION BY THE CONGRESS

Because so much is at stake for the individuals involved, GAO believes the Congress should hold hearings to obtain the views of interested parties and decide the future of the services' characterization and separation systems. (See p. 73.)

#### DISCHARGING SERVICE MEMBERS FOR ADVERSE REASONS IS COSTLY

GAO conservatively estimates the cost of imposing discharges for adverse reasons at \$55 million a year. Much of the cost is pay and allowances paid to members being processed for separation. GAO's estimate does not include several cost elements which could not be readily developed, such as recruiting and training costs lost due to the early separation. (See pp. 16, 17, and 20.)

In GAO's sample at an Army facility, the average days to process discharges for adverse reasons ranged from 20 days (marginal performance) to 116 days (misconduct with an administrative hearing). While procedural differences help account for the longer time frame to finalize discharges for misconduct, the length of time to process all discharges for adverse reasons in the sample appeared inordinate. (See pp. 15, 16, and 20.)

To help insure that unproductive and potentially disruptive members are promptly separated, GAO recommends that the Secretary of Defense, in conjunction with the service Secretaries, develop standard time frames for processing people for separation. (See p. 21.)

Appropriations will, if acted on, cause DOD to significantly modify its current policies and practices for characterizing military service. GAO believes that the Congress should consider this matter further and decide the future of the services' discharge systems. (See pp. 83 to 85.)

upgrade. When they do, however, the chances of getting the discharge upgraded are about one in two. (See pp. 74 and 80.)

Factors considered in making upgrading decisions are different from those used in initially determining the service characterizations, such as behavior and performance before and after military service. Discharge review boards did not have uniform criteria until March 1978; correction boards still do not. Differences in upgrade criteria widen the disparities in the discharges initially imposed. (See pp. 75, 76, 80, and 81.)

GAO recommends that the Secretary of Defense (1) insure that the upgrade criteria for discharge review boards are applied fairly and consistently among the services and (2) establish uniform criteria for the boards for correction of military or naval records. (See p. 82.)

#### AGENCY COMMENTS

At our request, DOD provided formal comments on a preliminary draft of this report. (See app. VIII.) Its overall comments generally did not agree with the positions and recommendations. DOD wants to continue the administrative discharge system in basically its present form. GAO also requested formal comments from the Veterans Administration. (See app. IX.) It stated that until the Congress changes the appropriate laws, character of service is the most critical factor in determining eligibility for most veterans' benefits. It stated also that the workload, cost, and delays in processing benefits would increase, and, consequently, the veteran beneficiary would suffer.

GAO believes that integrity must be restored to the honorable discharge and disparities among the discharges imposed reduced while protecting the service member from unwarranted involuntary separation and undeserved service characterization. The recommendations made by the House and Senate Committees on

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#### ABBREVIATIONS

AWOL	absence without leave
DOD	Department of Defense
GAO	General Accounting Office
VA	Veterans Administration

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## CHAPTER 1

### INTRODUCTION

Department of Defense (DOD) policy states that the services have the right and the duty to discharge enlisted members who clearly demonstrate they are unqualified for retention and that their behavior and performance should be characterized. Judgment as to the character of service is reflected by the type of discharge certificate issued. In descending order of desirability, service is characterized as (1) honorable, (2) general (under honorable conditions), (3) under other than honorable conditions, 1/ (4) bad conduct, and (5) dishonorable. The first three characterizations are issued under a three-tiered administrative discharge system; the latter two can be imposed only as punishment by a military court.

In carrying out this policy, the services are in a unique position to pass judgment on a large segment of the U.S. population. About 400,000 men and women are recruited each year, and most return to civilian life after a single tour of duty or less. Since 1950 almost 21 million people have been separated from the Armed Forces. Military personnel turnover is likely to remain substantial in the years ahead.

Typically, 90 percent or more of the discharges issued are honorable. Over the last quarter of a century, however, 1.5 million members have received less than fully honorable administrative discharges. Punitive discharges--bad conduct and dishonorable--account for less than 1 percent of all discharges. Of those who served to the end of their enlistment, 99 percent received honorable discharges.

Service characterizations are used by Federal and State agencies. The Veterans Administration (VA) uses them, for example, to establish eligibility for veterans' benefits. They are also used in ways not intended by DOD. For example, DOD states that it is contrary to its intent that private employers discriminate against people who receive less than fully honorable discharges in making employment decisions, but it recognizes that this happens.

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1/Effective Jan. 1, 1977, an "undesirable" discharge was redesignated a discharge "under other than honorable conditions."

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(for the Coast Guard), the Army, the Navy, and the Air Force to design a discharge system are outlined in appendix III.

RELATIONSHIP OF THE DISCHARGE  
SYSTEM TO CRIMINAL WRONGDOING

The basic authority for the military criminal law system is the Uniform Code of Military Justice (code). <sup>1/</sup> With its enactment, each of the services became subject to the same law. The legislative history shows that this law was to provide a new and better system of justice by insuring that there would be no disparities among the military services in administering justice.

The code states what conduct is a crime, establishes the types of military courts, and describes the basic procedures to follow in administering military justice. It also sets forth the fundamental rights of military people in the three main steps of criminal prosecution: pretrial proceedings, trial, and appellate review. A general court can impose both bad conduct and dishonorable discharges. A special court can impose only bad conduct discharges. Any discharge imposed by a court-martial does not become effective until reviewed and approved by a court of military review and, if appealed, the U.S. Court of Military Appeals.

Criminal offenses are often dealt with through the administrative discharge system either directly or indirectly. They are dealt with directly when the discharge in lieu of court-martial is used as an alternative to court-martial under the code. Since no finding is made against alleged offenders, members do not establish criminal records when separated for this reason. However, there is no assurance that any crimes were committed or that the cases would have even gone to trial. Criminal wrongdoing is dealt with indirectly when people are administratively discharged on the basis of conviction records in civilian or military courts.

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<sup>1/</sup>The code was enacted as part of the act of May 5, 1950 (64 Stat. 108), which contained 16 additional sections. It was thereafter revised, codified, and enacted into law as part of title 10, United States Code, by the act of August 10, 1956, and has subsequently been further amended (10 U.S.C. 801-940), including the Military Justice Act of 1968, enacted as Public Law 90-632 (82 Stat. 1335) on Oct. 24, 1968.

## HISTORY AND PURPOSE OF CHARACTERIZING SERVICE

Permanent stigma as punishment is a recognized element of military justice following a court-martial conviction. In the past this included branding and publicizing in home State newspapers the details relating to convictions for fraud or cowardice, in addition to a stigmatizing discharge. The dishonorable discharge was authorized when the Articles of War were first adopted in 1786. The bad conduct discharge was authorized when the Articles of War were revised in 1948.

Use of discharge certificates issued through administrative (nonjudicial) procedures officially labeling a soldier "without honor" started late in the 19th century. These were to be issued in cases of fraudulent enlistment, a sentence of confinement by a civilian court, and misconduct in the military. By 1916 two types of administrative discharges were formally recognized. One was characterized as honorable, and the other had no characterization. The purpose was to distinguish between those whose service had been considered honorable without stigmatizing those whose service had not been honorable. The present three-tiered administrative discharge system was adopted by all the services in 1947 following recommendations made by the Joint Armed Services Committee. A chronology showing the evolution and recent congressional consideration of the administrative discharge system is contained in appendix II.

DOD has testified that this system is needed to reward good and faithful service based on proper military behavior and proficient performance of duty. DOD considers the honorable discharge an incentive to encourage meritorious performance and, at the time of separation, an appropriate expression of appreciation for a job well done. The general discharge is considered appropriate when a member's record is not sufficiently meritorious to earn the special recognition of honorable and faithful service. The discharge under other than honorable conditions is issued for reason of misconduct or upon approval of a discharge to avoid court-martial.

Bad conduct and dishonorable discharges are set forth in law. No specific statutory provisions prescribe procedures or reasons for administratively separating members with general discharges or discharges under other than honorable conditions. The issuance of less than honorable administrative discharges is governed by regulations developed by DOD and the military departments. The principal laws authorizing the Secretaries of Defense, Transportation

## CHAPTER 2

### PROCESSES FOR IMPOSING AND REVIEWING DISCHARGES FOR ADVERSE REASONS NEED TO BE MORE EFFICIENT AND EQUITABLE

Service members are required to complete their periods of obligated service under penalty of law. Historically, the enlistment contract can seldom be voided by the service member but can be terminated at the option of the military. All service members should be adequately protected against unwarranted involuntary separation for adverse reasons. However, the procedural safeguards provided differ among the services and the processes for separating service members are time consuming and costly.

#### PROCESSES FOR IMPOSING AND REVIEWING DISCHARGES

Many people and organizations are involved in imposing and upgrading discharges, including administrative discharge boards that make recommendations concerning the discharge to be imposed, discharge review boards that rule on discharge upgrading, judges, juries, courts of military review, and boards for the correction of military or naval records. Regardless of whether individuals are discharged under the administrative or judicial process, unit commanders must initiate action leading to the separation. They are given broad discretion in making separation decisions and in characterizing the service of these individuals.

The chart on the following page describes in general the processes for imposing and reviewing discharges imposed on people separated before the end of their enlistment for adverse reasons.

#### Role of commanders

Commanders have the duty to initiate separation proceedings under the administrative process against members who, they believe, are unqualified for further service. Commanders also have important responsibilities and functions in administering the military criminal law system. After investigating the circumstances of criminal wrongdoing, they decide whether to excuse the individuals, assess nonjudicial punishment (article 15), or recommend court-martial.

Certain conduct is a crime under the code and is included in administrative directives as a reason for separation. In these cases the individuals can be dealt with either under the code or through the administrative discharge system. Only individuals discharged for reasons of misconduct or in lieu of court-martial can be issued discharges under other than honorable conditions--the most severe type of administrative discharge.

#### SCOPE OF STUDY

Our study addressed how problems with the system should be resolved. Specifically we

- researched what DOD, the services, and others knowledgeable on the subject say about the effects of service characterizations;
- examined the procedural safeguards and protections of the administrative processes for imposing and reviewing discharges;
- evaluated the nature and extent of the problems which need to be resolved, possible avenues for doing this, and the merits of revisions currently being considered by DOD and the services to present discharge policies and practices;
- reviewed court cases recently decided and pending which may have potentially severe repercussions for DOD and the services in terms of their discharge review practices; and
- obtained data necessary to estimate the cost of characterizing service.

We made extensive use of our study and our report entitled "AWOL in the Military: A Serious and Costly Problem" (FPCD-78-52, Mar. 30, 1979) and DOD's "Report of the Joint-Service Administrative Discharge Study Group," dated August 1978. Appendix VI lists these and other reports pertaining to the discharge system. Locations we visited are listed in appendix I.

If the commander refers the case up the chain of command with the recommendation to court-martial, his superior officer may convene one of three types of courts (summary, special, or general, each having increasing punishment authority) or approve a request by the accused for an administrative discharge in lieu of court-martial. Summary courts are not authorized to impose discharges. In special and general courts, a judge or jury must decide if a punitive discharge should be included in the punishment imposed for certain offenses.

The officer who approves the trial of the accused is referred to as the convening authority. The code requires that he review the record after the trial and approve a finding of guilty and the sentence imposed. He may exercise clemency in the form of disapproval, mitigation, commutation, or suspension of the sentence, or he may order a rehearing. Thus he has the authority to set aside a discharge imposed by a military court.

#### Role of administrative discharge boards

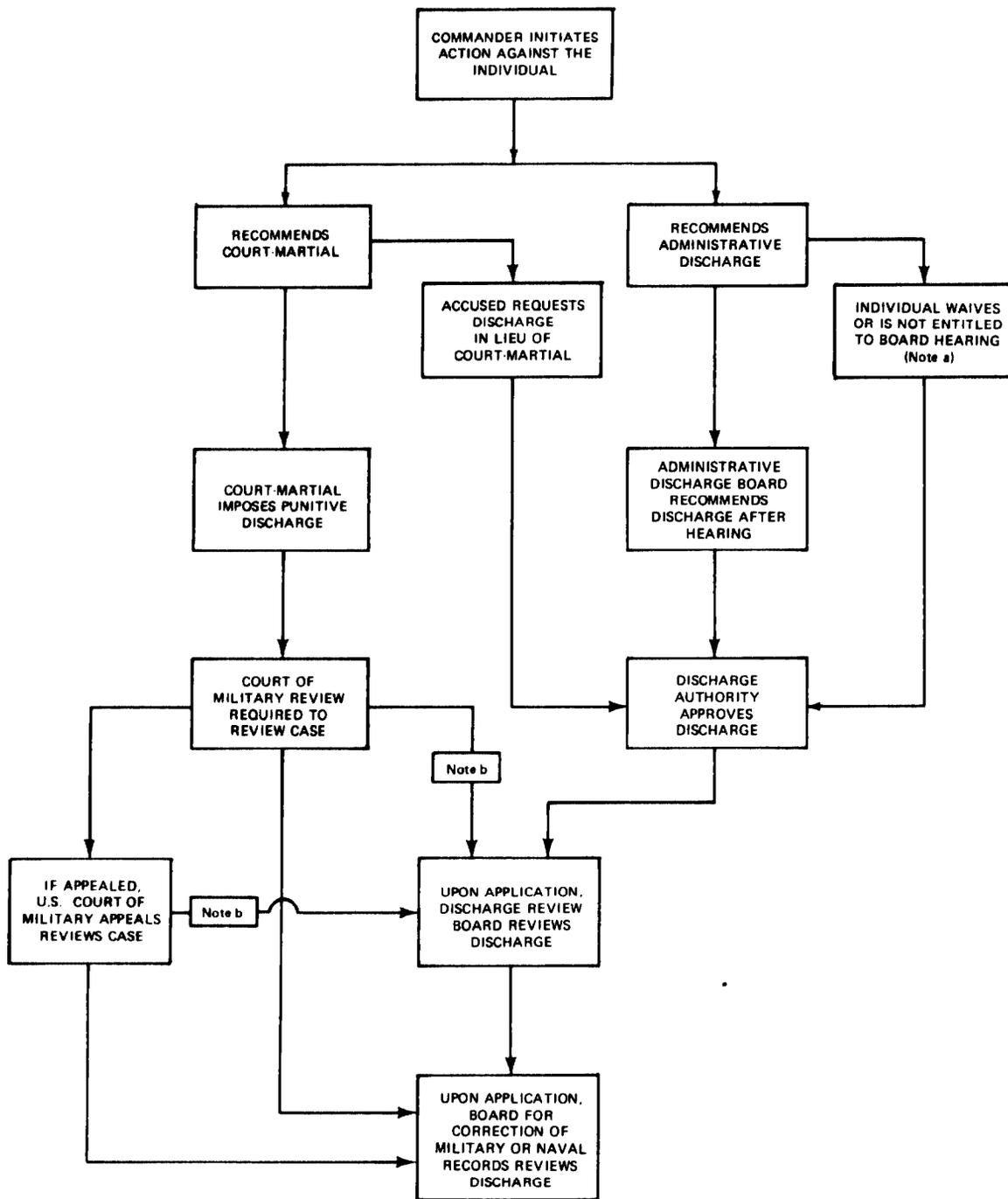
Boards are composed of at least three commissioned officers, one of which must hold the rank of major/lieutenant commander or higher. Females, minorities, and reservists being considered for separation are entitled to have at least one voting board member with common characteristics.

During board hearings the person being considered for separation has the right to (1) be represented by counsel, (2) challenge any voting member for cause, (3) submit sworn or unsworn statements, affidavits, etc., (4) present witnesses, and (5) question witnesses.

After the hearing, the board by majority vote must recommend to the discharge authority that the individual be retained or separated and, in the latter case, the type of discharge to be imposed. The decision to retain or separate may be based on the member's entire military record. The type of discharge recommended is to be based on the person's military record during the current enlistment period.

In no case may the discharge authority approve a discharge less favorable than the board recommended. If the discharge authority believes that the individual should be separated even though the board has recommended retention, he may recommend separation to the service Secretary, who takes final action.

PROCESSES FOR IMPOSING AND REVIEWING DISCHARGES FOR ADVERSE REASONS



a/ All service members separated for misconduct are entitled to administrative discharge board hearings. Eligibility for hearings varies among the services when members are separated for unsuitability. Members separated for marginal performance are never given this option.

b/ A bad conduct discharge imposed by a special court-martial may be reviewed by a discharge review board.

General discharge (under honorable conditions)

"Appropriate when a member's military record is not sufficiently meritorious to warrant an honorable characterization, as prescribed by the regulations of the Service concerned."

Under other than honorable conditions  
(formerly an undesirable discharge)

"Appropriate when a member is separated for (a) misconduct or security, when based on the approval of a recommendation of an administrative discharge board or waiver of the right to board action, or (b) resignation or request for discharge for the good of the Service \* \* \* (in lieu of court-martial)."

The directive further states that the discharge characterization will be based solely on the member's military record during the current enlistment period but provides no guidance on the standards of performance and conduct underlying the characterization.

Similarly the Manual for Courts-Martial does not provide any clear guidance on the circumstances under which members should be separated and the types of discharges which are appropriate. The manual states:

Bad conduct discharge

"\* \* \* is described as a punishment for bad-conduct rather than as a punishment for serious offenses of either a civil or military nature. It is appropriate as punishment for an accused who has been convicted repeatedly of minor offenses and whose punitive separation from the service appears to be necessary."

Dishonorable discharge

"\* \* \* should be reserved for those who should be separated under conditions of dishonor, after having been convicted of offenses usually recognized by the civil law as felonies, or of offenses of a military nature requiring severe punishment."

The 1978 DOD Joint-Service Administrative Discharge Study Group stated in its report 1/ that DOD had not specified the evidentiary standard required to support an administrative board's findings and that the services each applied a different standard. The group concluded that:

"There were no legitimate 'service differences' which justify application of different standards in this area and recommends inclusion in the directive of a requirement that the board's findings be supported by a 'preponderance of the evidence'."

#### Guidance on service characterizations

Service members are required by law to complete their periods of obligated service. Historically, enlistment contracts can seldom be voided by soldiers, but they can be terminated for various reasons by the military. DOD Directive 1332.14 2/ states that the services have the right and duty to administratively discharge enlisted members who clearly demonstrate they are unqualified for retention and sets forth the policies, standards, and procedures governing such separations. It contains the following guidance on each of the three types of discharges.

#### Honorable discharge

"Predicated upon proper military behavior and proficient performance of duty with due consideration for the member's age, length of service, grade, and general aptitude. A member will not necessarily be denied an honorable characterization solely by reason of a specific number of convictions by courts-martial or actions under Article 15 of the Uniform Code of Military Justice (10 USC 815 \* \* \*) during his/her current enlistment or period of obligated service."

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1/"Report of the Joint-Service Administrative Discharge Study Group (1977-78)," Department of Defense, Aug. 1978.

2/"Enlisted Administrative Separations," DOD Directive 1332.14, Dec. 29, 1976.

- Performance which has been noncontributory to unit readiness and mission accomplishment as specifically evidenced by below average efficiency ratings or specific demonstrated incapacity to meet effectiveness standards.
- Failure to attain or maintain required job skill proficiency, either by associated inaptitude or non-application.
- Presence creating an administrative burden to the command due to minor military or disciplinary infractions.

#### Unsuitability

Members are determined unsuitable for further service because of personality disorders, alcohol abuse, homosexual or other aberrant sexual tendencies, unsanitary habits, financial irresponsibility, inaptitude, apathy, defective attitudes, or the inability to expend effort constructively.

#### Misconduct

To be separated for misconduct, a service member must be determined, from his military record, unqualified for further service on the basis of patterns of conduct and certain acts or conditions, which include convictions in civilian or military courts.

#### Discharge in lieu of court-martial

This discharge must be requested by the service member, and, if approved, he avoids trial by court-martial and a possible Federal conviction for the alleged offense.

#### Safeguards in imposing and reviewing discharges

Service members are required by law to complete their periods of obligated service or suffer potentially severe consequences. However, members' service can be terminated by the military should they be judged unworthy for retention. DOD Directive 1332.14 states that service members have rights in connection with discharges which are to be protected. Except when requesting a discharge in lieu of court-martial, this directive states that no individual is to receive a discharge under other than honorable conditions--the most severe type of administrative discharge--

Reasons used to separate members  
and types of discharge authorized

The chart below shows the major reasons why people are discharged and the types of discharge authorized for each reason.

<u>Reason</u>	<u>Administrative discharges</u>			<u>Punitive discharges</u>	
	<u>Honorable</u>	<u>General</u>	<u>Under other than honorable conditions</u>	<u>Bad conduct</u>	<u>Dis-honorable</u>
General grounds (including end of enlistment)	yes	yes	no	no	no
Marginal performance	yes	yes	no	no	no
Unsuitability	yes	yes	no	no	no
Misconduct	yes	yes	yes	no	no
In lieu of court-martial	yes	yes	yes	no	no
Court-martial	no	no	no	yes	yes

Separation from the service requires two principal decisions: (1) whether the conditions set forth under one of the reasons authorizing separations are met and (2) what discharge characterization is appropriate. The principal reasons for involuntarily separating members before the end of their enlistment are marginal performance, unsuitability, and misconduct. In recent years the discharge in lieu of court-martial has become a frequently used reason for separation. But an individual cannot be involuntarily separated before the end of his enlistment for this reason, since the member must request separation.

Marginal performance

Marginal performance is the principal reason for separating people with 36 months' service or less. Marginal performer discharge programs provide a means to discharge people expeditiously, relieving commanders of much of the burden of separating people who, they believe, are nonperformers. DOD requires that separation for marginal performance be based on:

Upon appeal by the accused, the case may be reviewed by the U.S. Court of Military Appeals--the highest military court.

PROCEDURAL SAFEGUARDS AFFORDED  
INDIVIDUALS INVOLUNTARILY  
SEPARATED VARY BETWEEN REASONS  
FOR SEPARATION AND SERVICE

As noted above, members administratively separated have procedural rights which are to be protected. The most important of these is the right to an administrative discharge board hearing. However, few of those involuntarily separated are given this option. Individuals requesting a discharge in lieu of court-martial must waive this option. Other safeguards against unwarranted separations are counseling and legal representation.

Service regulations generally state that people having up to 36 months of service may be separated for marginal performance on the basis of immediate commanders' recommendations and agreement by the discharge authorities. Members are not entitled to hearings, and, except for the Army, consent of the members is not required. Army regulations state that members having between 6 and 36 months of service cannot be involuntarily separated for marginal performance. All members being processed for general discharges are entitled to consult with lawyers at the outset of the proceedings.

DOD Directive 1332.14 states that only in certain cases are commanders, before initiating separation for unsuitability, normally expected to counsel individuals concerning their deficiencies and afford them a reasonable opportunity to overcome them. Once separation proceedings begin, the individuals' procedural safeguards depend on the years of active military service. Persons with less than 8 years' service are afforded the opportunity to present only a written statement on their behalf for the record. As is the case with marginal performance, they are entitled to consult with lawyers if they are being processed for general discharges.

In contrast, the directive states that individuals with 8 or more years of service are entitled to administrative discharge board hearings. The directive is strictly followed in the Navy and the Marine Corps. The Air Force, however, provides hearings to all persons in pay grades E-4 or above. Most liberal is the Army, which provides hearings to all people separated for unsuitability, regardless of time in the service or pay grade. The Army's providing members separated for unsuitability the option of hearings costs almost \$8 million a year more than would be incurred if the Army followed

unless he is given the right to present his case with the advice and assistance of counsel before an administrative discharge board composed of at least three officers. Any such discharge imposed must be supported by an approved board's finding and recommendation. An individual can waive his right to board action.

The DOD directive and implementing service regulations governing discharges in lieu of court-martial require that:

- The accused be assigned qualified legal counsel before initiating the request.
- The accused sign a statement that he understands the adverse nature and possible consequences of a discharge under other than honorable conditions.
- The discharge authority decide whether to approve the request and, if so, the type of discharge.

After a less than honorable discharge has been imposed, the former member can apply to a discharge review board for an upgrade. If relief is denied by this board, application can be made to a board for correction of military or naval records.

The code and the Manual for Courts-Martial require that before a punitive discharge can be imposed:

- The accused be assigned qualified legal counsel to prepare and defend the case.
- The accused be tried by a special or general court-martial, which, upon finding the accused guilty, must decide that an appropriate sentence should include a punitive discharge.
- The record of trial be reviewed by a staff judge advocate or legal officer, who must make a written recommendation to the convening authority on the action he should take.
- The findings and sentence of the court-martial be reviewed and approved by a general court-martial convening authority.
- The findings and sentence of the court-martial be reviewed and approved by a court of military review.

training. Proposals now being considered would require that people separated for this reason be counseled and given a reasonable opportunity to overcome their deficiencies.

FEW PEOPLE INVOLUNTARILY SEPARATED  
ARE ENTITLED TO BOARD HEARINGS

Since marginal performance and unsuitability are by far the most frequently used reasons for involuntarily separating individuals, few of those discharged for adverse reasons are entitled to board hearings. Of about 96,000 people separated for marginal performance, unsuitability, and misconduct in 1977, only an estimated 22,000 were entitled to hearings. This assumes that personnel separated for unsuitability in the Air Force, Navy, and Marine Corps had 8 years or less of service and, therefore, were not entitled to board hearings. This means that only one of every four members involuntarily separated during this period were entitled to hearings. The Army's adherence to DOD guidance would have reduced this to less than one of every five.

ESTIMATED TIME FRAMES FOR  
SEPARATING PROBLEM PEOPLE

To find out how much longer it takes to separate people for reasons authorizing less than honorable discharges over those which do not, we performed a test of Army people discharged for adverse reasons at Fort Riley, Kansas, during calendar year 1978. The length of time it took to complete these actions served as the basis for estimating part of the costs attributable to imposing and reviewing discharges. Our sample included 125 cases of people separated for marginal performance, 138 separated for misconduct, and 47 discharged in lieu of court-martial. Of those separated for misconduct, 49 (36 percent) had board hearings. We did not analyze any separated for unsuitability because the records were not readily available.

Separating individuals for marginal performance takes an average of about 20 days. This average increases to 26 days for discharges in lieu of court-martial and to 54 days for people separated for misconduct without board hearings and 116 days with hearings. These averages are shown in the following schedule, along with the minimum and maximum processing times for each reason for discharge.

DOD guidance. The majority of this cost, however, is attributable to lengthy delays in finalizing the separations after the individuals have been judged unfit for retention. In all cases persons entitled to hearings may waive this right.

The directive requires that individuals being separated for misconduct be given the same rights as those separated for unsuitability with 8 or more years of service.

The 1978 Joint-Service Study Group has proposed that members in pay grades E-4 or above or members with 5 or more years of service be entitled to hearings when being processed for unsuitability. The group noted that the current directive provided for hearings only when members had more than 8 years of service, regardless of pay grade, and considerable disparity existed among the services as to how this provision was being applied. The group stated that "this disparity among the services in granting board hearings in unsuitability cases is an inequity which requires correction."

The marginal performer program was of particular concern to the group. Drawing on their collective experience, the group members believed that a considerable number of cases would have been more appropriately handled under other reasons but had been labeled marginal performance for ease of processing. The group concluded that the services were taking the easy way out rather than exercising proper leadership and enforcing traditional disciplinary alternatives and that this had contributed to unnecessary first-term attrition.

In support of the group's conclusion were Army Research Institute studies, which group members believed constituted the only authoritative work done within the military community on this program. These studies reflected that nearly half the Army personnel separated for marginal performance may have been separated for this reason by sympathetic supervisors responding to members' desires rather than adhering to program criteria. The group referred to other studies which reflected misuse of the marginal performer program because the criteria were vague and overlapped with other reasons for separation.

To help curb misuse of the program, the group recommended restricting eligibility to individuals in their first enlistment who had completed less than 24 months' service, were serving in pay grades of E-3 or below, and had received fewer than a combination of three article 15's or convictions by court-martial following completion of basic/recruit

Personnel Costs of Imposing and Reviewing  
Discharges Imposed for Adverse Reasons (note a)

	<u>Costs</u> (millions)
Imposing discharges:	
Unsuitability	\$ 7.1
Misconduct	4.5
In lieu of court-martial	<u>2.6</u>
Cost of imposition	<u>14.2</u>
Reviewing discharges:	
Discharge review boards	2.5
Boards for correction of military or naval records	.3
Courts of military review	<u>3.5</u>
Cost of review	<u>6.3</u>
Pay and allowances of service members awaiting separation	<u>35.1</u>
Total personnel costs	<u>\$55.6</u>

a/Details and methodologies relating to our estimate are shown in appendix V.

Other than the \$3.5 million spent by the courts of military review in reviewing bad conduct and dishonorable discharges, our estimate does not include the costs of punitive discharges imposed by military courts or the accompanying review by the U.S. Court of Military Appeals and the costs of facilities, equipment, and training relating to separations.

Separation for misconduct and sometimes unsuitability gives individuals the right to administrative discharge board hearings, counseling, and legal representation. Therefore, a large portion of our estimate is for the salaries of commanders, members of administrative discharge boards, and others who process these people for separation, which would not be incurred were they not entitled to hearings. An even larger portion of our estimate covers the pay and allowances during the additional time it takes to be processed for misconduct

<u>Reason for discharge</u>	<u>Days to process</u>		
	<u>Average</u>	<u>Minimum</u>	<u>Maximum</u>
Marginal performance	20	1	54
In lieu of court-martial	26	9	50
Misconduct, no board hearing	54	11	190
Misconduct, board hearing	116	67	180

A Fort Riley official told us that a number of reasons account for delays in processing, including the urgency the commander places on separating the individual, scheduling the individual for physicals, locating necessary records, correcting errors in the records, and numerous other administrative problems. Since these difficulties are common to all adverse separations, however, we believe they do not fully explain the lengthy delays experienced in separating individuals for misconduct.

The Army and the Air Force have established time frames for processing separations. We did not review the Air Force time frames. The Army time frames apply only to separations for marginal performance, requiring that such separations be effected within 3 days after approval by the discharge authorities. On the basis of our tests, it was taking 5 days to complete these actions.

#### COST OF DISCHARGING PEOPLE FOR ADVERSE REASONS

DOD and the services do not know the cost of discharging people. We estimate that the costs attributable to imposing and reviewing discharges for adverse reasons conservatively total \$55 million annually for all four services, as follows:

## Veterans Education Project

The Veterans Education Project is headquartered in Washington, D.C., and operates to assist veterans holding less than honorable discharges to seek discharge upgrades. Project officials said that the assistance they provide to veterans is needed because DOD does not have an effective outreach program to encourage veterans with such discharges to have them reviewed for a possible upgrade. In support of this contention, they cited an October 1978 DOD response to the project's request for documents pertaining to DOD's discharge review program. This response showed that much of the outreach planned after passage of Public Law 95-126 never materialized, one reason being that the required funding was never made available.

Project officials stated that even when former members applied for a discharge upgrade, official guidance was inadequate and did not tell the individual how to prepare the strongest possible case. This led the project in April 1979 to publish a 16-page document entitled "The Veteran's Self-Help Guide To Discharge Upgrading." This document provides veterans holding less than honorable discharges practical guidance on how to apply for a discharge upgrade and strongly encourages them to do so.

According to project officials there are 100 or so organizations around the country which, in whole or in part, operate to provide veterans with assistance in applying for discharge upgrades, and statistics were cited indicating the increased success veterans have who take advantage of this assistance. Such efforts are funded both privately as well as by State agencies. Those involved in this work believe that many veterans have been wronged by the discharge system and are being denied employment opportunities and the accompanying chance to be a productive and self-sufficient member of society. Since a disproportionate number of the people affected are poor and have only a limited education, they are not likely to do the work necessary to seek a discharge upgrade on their own initiative or present the best possible case when they do make the effort.

### CONCLUSIONS

Service members are required to complete their periods of obligated service under penalty of law. Historically, the enlistment contract can seldom be voided by the soldier but can be terminated at the option of the military.

and unsuitability over marginal performance when the individuals are entitled to hearings. We believe this is a lost cost since these individuals have already been judged by their immediate commanders as unfit for retention, are being processed for the most serious adverse reason, and are eventually separated. Until the separations are finalized, however, they continue to receive their full pay and allowances and are counted against end strength.

Not all members separated for reasons authorizing less than honorable discharges are given the option of a board hearing. According to DOD guidance, individuals separated for unsuitability are entitled to board hearings only if they have 8 or more years of service. Army regulations provide that people separated for unsuitability are entitled to hearings regardless of time in the service.

Costs are incurred by Federal and State agencies and private organizations to overcome the negative effects of less than honorable discharges

Since some employers do not consider veterans with less than fully honorable discharges for job openings, in 1966 the Congress authorized a program, which continues today, wherein the Department of Labor issues deserving veterans exemplary rehabilitation certificates. These certificates are designed to reduce the effects such discharges have in hindering former service members from finding gainful employment. The law provides that certificate holders are entitled to special counseling and job development assistance in public employment offices. The certificates do not change the discharges nor do they allow people to receive any veterans' benefits to which they are otherwise not entitled.

Other programs have been publicly and privately funded over the years to help veterans overcome adverse discharge characterizations in seeking employment. One such effort was project VERDICT, started in December 1975 with joint funding by the Federal Government and a State college. Under this program, 74 law students were hired to prepare case briefs and represent veterans before discharge review boards and boards for correction of military or naval records. The objective of upgrading 50 percent of the cases appealed was achieved before discontinuance of the program in June 1977.

discharges be given the option of a hearing before an administrative discharge board. Eligibility for administrative discharge board hearings should be uniform across the services and the boards should be empowered to establish, on the basis of the member's service record, whether prescribed procedures were followed in counseling and other rehabilitative efforts. In all those cases where the reason for discharge will bar Federal veterans' benefits, except by reason of court-martial, the discharge must be reviewed by a board.

To help insure that unproductive and potentially disruptive members are promptly separated, we recommend that the Secretary of Defense, in conjunction with the service Secretaries, develop standard time frames for processing people for separation. We recognize that procedural and logistical differences among the services may prevent establishing uniform standards. However, the differences considered necessary should be justified to and approved by the Secretary of Defense.

During 1977 only one of every four members separated for adverse reasons was entitled to an administrative discharge board hearing before the separation action being finalized. Strict adherence to DOD guidance would have reduced this to one of every five.

DOD criteria on board hearings are strictly applied in the Navy and the Marine Corps where board hearings are only granted to members being separated for unsuitability with 8 or more years of service. The Air Force, however, provides board hearings to all persons separated for unsuitability in pay grades E-4 or above. Most liberal is the Army which provides board hearings to anyone being processed for separation for unsuitability regardless of time in the service or pay grades.

To more adequately protect the rights of members being involuntarily separated, all individuals (1) being separated for adverse reasons and (2) recommended for a less than fully honorable administrative discharge should be given the option of a hearing before an administrative discharge board. The board should be empowered to establish, on the basis of members' service records, whether the separations are justified and prescribed procedures were followed in such matters as counseling and other rehabilitative efforts.

We estimate that the cost of separating service members for adverse reasons is, conservatively, \$55 million a year. A large portion of this cost results from present practices which allow for nonproductive and potentially disruptive individuals to remain on active duty, drawing full pay and allowances, long after they have been judged by their immediate commanders as unfit for retention. Damage is done to unit combat capability when ineffective soldiers remain on active duty and are counted against end strength. Prompt separation would allow for their more timely replacement and minimize disruption to unit effectiveness. To help insure that unproductive and potentially disruptive members are separated promptly, we believe that time frames are needed for processing people for separation.

#### RECOMMENDATIONS

To more adequately protect the rights of members administratively and involuntarily separated, we recommend that the Secretary of Defense insure that all individuals (1) being separated for adverse reasons and (2) who may receive general or under other than honorable conditions

"(1) Immediate steps should be taken to standardize the basis for awarding honorable discharges across the services. It is grossly inequitable for one service to award an honorable discharge to one individual for being released under identical conditions for which another is awarded a general discharge.

"(2) The Department should ensure that any individual receiving an honorable discharge has in fact performed at such a level that the United States Government can attest in writing to that individual's courage, loyalty, honesty, trustworthiness, and effectiveness.

"(3) Revised discharge procedures should be implemented, and draft legislative proposals provided as necessary, in order to rectify the current discharge system whereby individuals receiving honorable discharges actually receive fewer benefits than individuals receiving a general discharge. Emphasis should be placed upon ensuring that a proper incentive system is constructed which will reward superior performance by an individual."

Enacting the Committees' recommendations will help insure that the honorable discharge is awarded to individuals who performed at such a level but will result in greater percentages of less than fully honorable discharges. However, the subjective decisions that must be made to characterize service and the differences in service separation policies and practices will make achieving the standardization desired by the Committees difficult.

INTERSERVICE VARIATIONS IN  
TYPES OF DISCHARGES IMPOSED  
AND REASONS FOR SEPARATION USED

Significant interservice differences exist in the use of each type of administrative discharge. The Air Force has traditionally given a greater, and the Marine Corps a lesser, percent of honorable discharges than the other services. A factor contributing to this is the fact that once problem people are identified, the Air Force tends to separate them quicker.

Using 1977 data for illustrative purposes, these differences are summarized below.

### CHAPTER 3

#### DISPARITIES IN DISCHARGES IMPOSED ARE

##### A SERIOUS AND LONGSTANDING PROBLEM

There is no overall uniformity in the discharges imposed on people with similar service records. The most important reasons for these disparities are (1) broad discretion given those making discharge decisions and (2) differing service philosophies and practices. The type of problems found strongly indicate that reasonable consistency in the discharges imposed has never been achieved since the three-tiered administrative discharge system was adopted by the services in 1947.

The reasons for separation establish the types of discharges authorized. Thus differences in the specific adverse reasons used and the frequency of their use should account for interservice differences in the discharges imposed. This was not the case, however. Variances exist not only in the reasons used to separate people before the end of their enlistment but also in the discharges imposed for the same reason among the services and within the same service over time.

The Air Force and the Marine Corps represent the opposite extremes in terms of discharge philosophies and practices. The probability of people with similar absence-without-leave (AWOL) and conviction records getting honorable discharges in the Air Force was about 13 times greater than in the Marine Corps.

##### RECENT CONGRESSIONAL CONCERN OVER DISCHARGE DISPARITIES

In December 1979 the House and Senate Committees on Appropriations <sup>1/</sup> expressed their concern over the differences among the services in the application of DOD guidelines controlling discharges. These Committees made recommendations to the Secretary of Defense that would minimize these differences and restore integrity to the honorable discharge. The recommendations require several specific actions to be taken by DOD:

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<sup>1/</sup>H. Rept. 96-450, 96th Cong., 1st sess., (1979), "Department of Defense Appropriation Bill, 1980," pp. 84-85. Concurred to in conference by the Senate Committee on Appropriations in December 1979.

Adverse Reasons for Discharge  
Fiscal Year 1977 (note a)

Reason	Army		Navy		Marine Corps		Air Force		DOD	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Marginal performer	33,506	63	1,617	5	2,150	16	8,980	58	46,253	41
Unsuitability	4,811	9	18,834	59	4,743	36	4,398	29	32,786	29
Misconduct	5,161	10	8,562	27	1,830	14	1,565	10	17,118	15
In lieu of court-martial	9,097	17	2,260	7	3,634	27	306	2	15,297	13
Court-martial	903	2	655	2	883	7	128	1	2,569	2
<b>Total</b>	<b>53,478</b>	<b>47</b>	<b>31,928</b>	<b>28</b>	<b>13,240</b>	<b>12</b>	<b>15,377</b>	<b>13</b>	<b>114,023</b>	<b>100</b>

a/Includes the transition quarter (July through Sept. 1976).

Except for the Marine Corps, each service used one reason to separate its problem people far disproportionate to any other reason. The Army and the Air Force separated most of their problem people for marginal performance, using this reason 63 and 58 percent of the time, respectively. The Navy most often used unsuitability, separating 59 percent of its problem people for this reason. While the Marine Corps most frequently separated its problem people for unsuitability, it made fairly heavy use of all adverse reasons. The Marine Corps used the discharge in lieu of court-martial at a greater rate than the other services and separated people by court-martial at three to seven times the rate of the other services.

The following table shows the distribution of each type of discharge imposed by the services in 1977 for those separated for adverse reasons.

Number of Discharges Issued  
for Adverse Reasons (note a)  
During Fiscal Year 1977

Type of discharge	Army		Navy		Marine Corps		Air Force		DOD	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Honorable	26,198	49	13,524	42	4,454	34	12,648	82	56,824	50
General	15,664	29	15,205	48	3,417	26	2,242	15	36,528	32
Under other than honorable conditions	10,713	20	2,544	8	4,486	34	359	2	18,102	16
Punitive	903	2	655	2	883	7	128	1	2,569	2
<b>Total</b>	<b>53,478</b>	<b>47</b>	<b>31,928</b>	<b>28</b>	<b>13,240</b>	<b>12</b>	<b>15,377</b>	<b>13</b>	<b>114,023</b>	<b>100</b>

a/Totals include the transition quarter (July through Sept. 1976).

Honorable discharges. The overall DOD rate was 90 percent, the Air Force percent was the highest (99 percent), and the Marine Corps percent the lowest (84 percent).

General discharges. The Navy issued the highest percent (12 percent), or 8 times as often as the Air Force.

Under other than honorable conditions. The Marine Corps issued the highest percent (7 percent), or 23 times as often as the Air Force.

The distribution of each type of discharge imposed in 1977 is shown in the following table, along with the number of people receiving them. About 40 percent of those separated were Army members.

Overall Number of Discharges Issued  
During Fiscal Year 1977

Type of discharge	Army		Navy		Marine Corps		Air Force		DOD	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
	(thousands)		(thousands)		(thousands)		(thousands)		(thousands)	
Honorable	209	88	119	86	47	84	136	99	511	90
General	16	7	16	12	4	7	2	1	38	7
Under other than honorable conditions	11	5	3	2	4	7	0	(a)	18	3
Bad conduct	1	(a)	1	1	1	2	0	(a)	3	(a)
Dishonorable	0	(a)	0	(a)	0	(a)	0	(a)	0	(a)
	<u>237</u>	42	<u>139</u>	24	<u>56</u>	10	<u>138</u>	24	<u>570</u>	<u>100</u>

a/Less than 0.5 percent.

The frequency with which less than honorable discharges are imposed is heavily influenced by the percent of members each service separates for adverse reasons before the end of their enlistment. Some consistency would be expected in the types of problems being experienced with service members, as indicated by the reasons used to separate them. As shown in the following table, however, not only do the rates at which the services separate problem people vary, but also the reasons used.

While the Navy did not always give people separated for marginal performance honorable discharges, its rate has increased while the Army's rate has declined. All those not receiving honorable discharges were issued general discharges.

Percent of Honorable Discharges  
Issued for Marginal performance

<u>Fiscal Year</u>	<u>Army</u>	<u>Navy</u>	<u>Marine Corps (note a)</u>	<u>Air Force</u>	<u>DOD</u>
1974	88	0	-	100	86
1975	78	0	-	100	81
1976	66	0	14	100	68
1977 (note b)	68	15	23	100	70

a/The marginal performer program did not start until late 1975.

b/Includes the transition quarter, July through Sept. 1976.

Unsuitability

Except for the Army, the services issued honorable discharges to most people separated for unsuitability in 1977 and have tended to do so over the past few years. While the Army gave honorable discharges to people separated for this reason at only one-third the rate of the other services in 1977, the Army rate has almost doubled since 1970. All those not receiving honorable discharges in 1977 were issued general discharges.

Percent of Honorable Discharges  
Issued for Unsuitability

<u>Fiscal Year</u>	<u>Army</u>	<u>Navy</u>	<u>Marine Corps</u>	<u>Air Force</u>	<u>DOD</u>
1970	14	78	70	62	55
1971	15	76	64	59	51
1972	16	76	57	59	47
1973	16	79	56	48	48
1974	12	72	46	51	45
1975	17	64	51	75	52
1976	21	57	69	68	56
1977	24	68	78	73	64

As shown in the preceding table, 114,023 service members discharged in 1977 were separated for adverse reasons, which accounts for 20 percent of all separations. Half of those discharged for adverse reasons were awarded honorable discharges, or more than 1 out of 10 of the honorable discharges awarded in fiscal year 1977. Consistency would be expected between the percent of people separated for adverse reasons and those receiving less than honorable discharges. Again, however, this is not the case, as shown in the table below.

<u>Service</u>	<u>Percent separated for adverse reasons</u>	<u>Percent receiving less than honorable discharges</u>
Marine Corps	24	67
Navy	23	58
Army	23	51
Air Force	11	18

As shown above, except for the Air Force, the services separated almost one in four of their people for adverse reasons, and the majority received less than honorable discharges. In contrast, the Air Force separated people for adverse reasons at less than half the rate of the other services, and only one in five of these received a less than honorable discharge.

The low rate at which the Air Force imposes less than honorable discharges can be partially explained by the fact that it separates most of its problem people for marginal performance and gives them honorable discharges. This also helps account for why the Army has the next lowest rate for imposing less than honorable discharges on people separated for adverse reasons, since it separates a higher percent of its problem people for marginal performance than any of the other services and gives two-thirds of them honorable discharges.

A complete discussion of interservice differences for people separated for marginal performance, unsuitability, and misconduct follows.

#### Marginal performance

Air Force regulations require that all people separated for marginal performance receive honorable discharges. Among the other services, in 1977 the Army gave the next highest percent of honorable discharges to people separated for this reason (68 percent) and the Navy the lowest (15 percent).

WE FOUND WIDE DISPARITIES IN  
DISCHARGES IMPOSED ON PEOPLE  
WITH RECORDS OF AWOL

Another dimension of the disparities in the discharges imposed is demonstrated by our AWOL report. 1/ AWOL is the most frequently committed crime in the military. The military's judgment on people who go AWOL is the same in all the services; that is, as a group they are not successful and are administratively separated before the end of their enlistment. Many of those separated for adverse reasons have histories of AWOL convictions, which contributed, at least in part, to the separation decisions.

Disparity in reasons  
for separation used

The Air Force most often separates people with AWOL records by the most expeditious process (marginal performance), whereas the Marine Corps uses the most time-consuming process (misconduct).

<u>Reason for separation</u>	<u>Percent of separations</u>			
	<u>Air Force</u>	<u>Army</u>	<u>Navy</u>	<u>Marine Corps</u>
Marginal performance	54	44	15	a/8
Unsuitability	16	30	52	30
Misconduct	30	26	33	62

a/The Marine Corps did not begin using this reason for separation until late 1975, which may account, in part, for the comparatively low percentage of separations for marginal performance.

Although factors other than AWOL records may be involved in deciding which reason for separation to use in individual cases, this chart illustrates the disparity in reasons used to separate people with AWOL records.

Disparity in types  
of discharges imposed

To compare the types of discharge given people in our AWOL study group, we analyzed how many of those returned to duty had been administratively separated for reasons of

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1/Report to the Congress, "AWOL in the military: A Serious and Costly Problem" (FPCD-78-52, Mar. 30, 1979).

## Misconduct

As in the case of marginal performance and unsuitability, the Air Force also has typically awarded a higher percent of honorable discharges for misconduct than the other services. The other services have made infrequent use of the honorable discharge when separating people for misconduct, as would be expected, since it is the most serious of the three adverse reasons most often used.

The Army rate of honorable discharges imposed for misconduct tripled between 1975 and 1977. This happened because the Army separated more people for fraudulent enlistment (a subreason for misconduct) than the other services combined and gave 85 percent of them honorable discharges. Excluding those separated for fraudulent enlistment, the Army's rate of honorable discharges awarded for misconduct is 17 percent-- a slight increase over 1975. The other services not only separated far fewer people for fraudulent enlistment but did not give them honorable discharges nearly as often.

### Percent of Honorable Discharges Issued for Misconduct

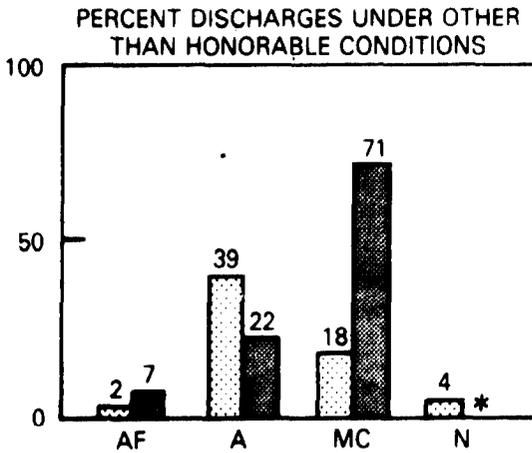
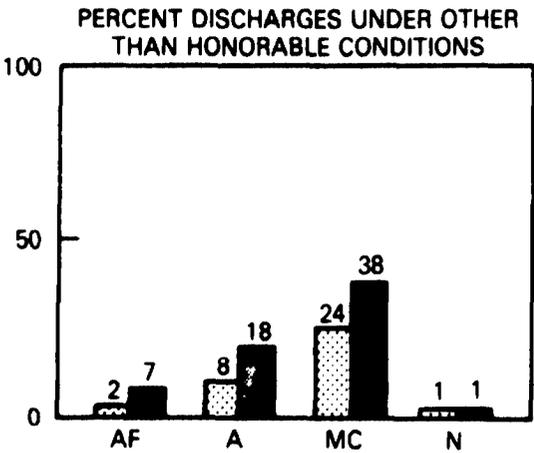
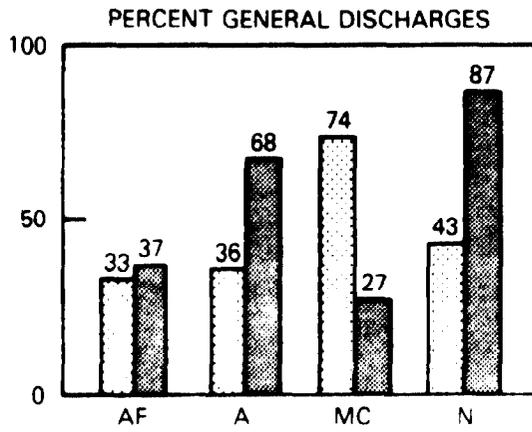
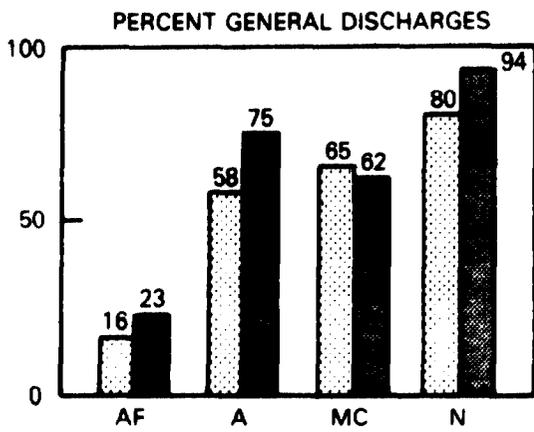
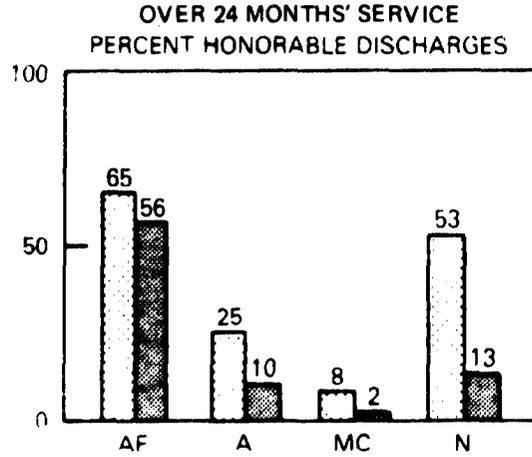
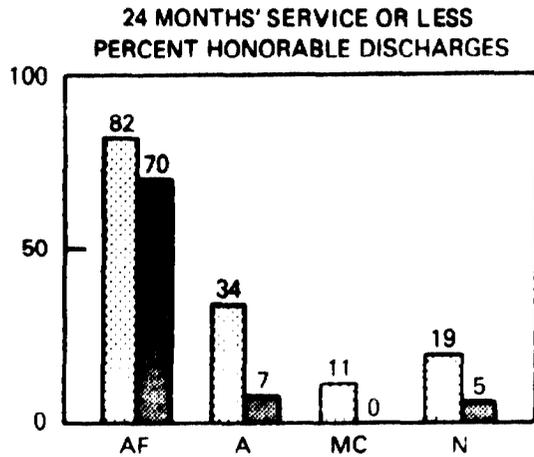
<u>Fiscal Year</u>	<u>Army</u>	<u>Navy</u>	<u>Marine Corps</u>	<u>Air Force</u>	<u>DOD</u>
1970	4	7	(a)	30	6
1971	5	7	(a)	18	5
1972	4	32	12	20	17
1973	3	14	6	12	7
1974	5	7	7	12	6
1975	14	7	6	15	10
1976	45	6	7	16	21
1977	42	5	11	29	19

a/Less than 1 percent.

### Percent of Less Than Honorable Discharges Issued for Misconduct in Fiscal Year 1977

<u>Service</u>	<u>General</u>	<u>Under other than honorable conditions</u>
Army	23	35
Navy	90	4
Marine Corps	32	57
Air Force	61	10

**FREQUENCY OF TYPE OF DISCHARGE IMPOSED  
BY MONTHS OF SERVICE AND NUMBER OF CONVICTIONS**



AF-AIR FORCE

MC-MARINE CORPS

A=ARMY

N=NAVY

1 OR 2 CONVICTIONS

3 OR MORE CONVICTIONS

\*LESS THAN 1/2 PERCENT

marginal performance, unsuitability, and misconduct. As shown in the following table, the Air Force issued the most honorable discharges (73 percent) and the Marine Corps the least (5 percent). The Marine Corps issued the most discharges under other than honorable conditions (45 percent) and the Navy the least (1 percent).

<u>Type of discharge</u>	<u>Percent of separations</u>			
	<u>Air Force</u>	<u>Army</u>	<u>Navy</u>	<u>Marine Corps</u>
Honorable	73	25	16	5
General	23	59	83	50
Under other than honorable conditions	4	16	1	45

The most important factors influencing types of discharge for people with AWOL records were the number of months served and the number of convictions. <sup>1/</sup> The influence of these factors is illustrated in the charts on the following page showing the frequency with which people with similar months of service and number of convictions received each type of discharge. The Air Force was the most lenient and the Marine Corps the most harsh in issuing discharges. The charts show that, depending on the number of months served and the number of convictions

- the rates of honorable discharges given by the Air Force ranged from 56 to 82 percent, compared with Marine Corps rates of 2 to 11 percent, and
- the Marine Corps rates for discharges under other than honorable conditions ranged from 18 to 71 percent, compared with Air Force rates of 2 to 7 percent.

Further analysis demonstrates disparities among the services in discharges imposed when examined on a comparative basis. To make this comparison, we distributed the Air Force, Army, and Navy sample of AWOL people by months of service and number of convictions in the same proportion as that experienced by the Marine Corps. We then computed the types of discharge for each service on the basis of

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<sup>1/</sup>Among the variables considered in this analysis were age, education, mental category, months served, number of prior convictions (including nonjudicial punishments), and number of times AWOL.

severe type of AWOL--AWOL over 30 days--and separated about 80 percent within 3 months after they had returned to duty. As shown below, the majority were separated for unsuitability, which results in an honorable or a general discharge.

<u>Months served after return to duty</u>	<u>Percent of separations by reason</u>		
	<u>Marginal performance</u>	<u>Unsuitability</u>	<u>Misconduct</u>
Less than 1	0	12	0
1 to 2	14	43	4
2 to 3	4	16	2
3 to 4	<u>1</u>	<u>3</u>	<u>1</u>
Total	<u>19</u>	<u>74</u>	<u>7</u>

AWOL report's conclusions and recommendations

Inadequate policy guidance, combined with differing attitudes among the services and commanders within a service, has resulted in wide disparities in the types of administrative discharge imposed in similar cases. While the present system of imposing discharges could be improved, it is very unlikely that a high degree of standardization will ever be achieved due to its subjective nature. Even if the disparities were reduced, the practice of characterizing service would still present a barrier to the quick and efficient separation of people.

The barrier to the quick separation of people caused by having to characterize service could be removed by requiring that discharges without service characterization be issued to individuals not serving a specified number of months. This criterion should be based on the time needed to identify and separate the majority of people who prove unsuccessful.

Included in the recommendations made to the Secretary of Defense for dealing with the AWOL problem was that he require discharges with no characterization of service for those members not serving a minimum number of months, regardless of the reasons for separation, except when court-martial directed or when medical or hardship reasons required it. DOD is considering a change in its discharge policies that would authorize a discharge without characterization in circumstances where characterization of service would be inappropriate, such as separations during recruit or basic training.

its practices during our study period. As indicated in the table below, if months of service and number of convictions were similar, the probability of receiving an honorable discharge in the Air Force would be about 13 times greater than in the Marine Corps and about 5 times greater than in the Navy or Army.

<u>Type of discharge</u>	<u>Percent of separations</u>			
	<u>Air Force</u>	<u>Navy</u>	<u>Army</u>	<u>Marine Corps</u>
Honorable	65	15	14	5
General	29	84	66	50
Under other than honorable conditions	6	1	20	45

Attitudes influencing reasons for separation and type of discharge

In discussing reasons for separation and types of discharge with military representatives, we found two diverse attitudes which, we believe, helps account for the disparities. Some commanders appear to discharge people with AWOL records by the most expeditious reason, believing that it is in the best interests of everyone. Other commanders are reluctant to separate people with AWOL records in the most expeditious manner because it results in an honorable or general discharge and many veterans' benefits for people serving more than 6 months. They believe that this diminishes the integrity of the honorable discharge and results in veterans' benefits being given to those whose service is not considered honorable. Thus they are more likely to separate people with AWOL records for the reason of misconduct, which has a high probability of resulting in a discharge under other than honorable conditions.

One Army commander said that he normally did not try to separate an individual for misconduct because to build a case that an administrative review board would accept was too much trouble. All too often, he said, the board did not approve the discharge or it upgraded the reason to unsuitability. Similarly, a Navy headquarters official explained that separation for unsuitability was much easier and less time consuming than separation for misconduct and that the easiest way for a commander to get rid of an AWOL person was to impose nonjudicial punishment for the AWOL and then administratively separate him for unsuitability. In his judgment, this was what most commanders were doing. Our analysis supported his belief. It showed that the Navy often imposed nonjudicial punishment for the most

other than honorable conditions. Only in the Air Force did the percentage of honorable discharges increase and the percent of general discharges and discharges under other than honorable conditions decrease.

Differences in Percent of Discharges Issued  
by Service in Fiscal Years 1972 and 1977 (note a)

Type of discharge	Army		Navy		Marine Corps		Air Force		DOD	
	1972	1977	1972	1977	1972	1977	1972	1977	1972	1977
Honorable	89	84	90	82	84	79	95	97	90	85
General	4	9	8	15	9	10	4	3	5	10
Under other than honorable conditions	6	6	1	2	4	10	1	(b)	4	4
Bad conduct	(b)	2	1	1	2	2	(b)	(b)	1	1
Dishonorable	(b)	(b)	(b)	(b)	(b)	(b)	(b)	(b)	(b)	(b)
Total (note c)	<u>99</u>	<u>101</u>	<u>100</u>	<u>100</u>	<u>99</u>	<u>101</u>	<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>

a/Fiscal year 1977 totals include the transition quarter (July through Sept. 1976). Discharges for immediate reenlistment are excluded from both years.

b/Less than 0.5 percent.

c/May not add to 100 percent because of rounding.

The group assumed that over time a specific reason for discharge should result in the same service characterization both within and among the services. In analyzing the three most frequently used reasons for discharge under the unsuitability category--personality disorder, apathy, and inaptitude--the study group found that this hypothesis did not hold true. As illustrated in the following table, significant changes occurred between fiscal years 1972 and 1977 within the services.

Percent of Discharges for Unsuitability  
Between Fiscal Years 1972 and 1977

Specific reason	Army		Navy		Marine Corps		Air Force		DOD	
	1972	1977	1972	1977	1972	1977	1972	1977	1972	1977
Personality disorder:										
Honorable	13	43	75	81	51	81	65	90	47	80
General	87	57	25	19	49	19	34	10	53	20
Apathy:										
Honorable	21	15	76	15	38	72	35	63	35	36
General	79	85	24	85	62	28	65	37	65	64
Inaptitude:										
Honorable	40	32	41	100	89	88	85	(a)	61	97
General	60	68	59	(b)	11	12	15	(a)	39	3

a/Data not provided by the study group.

b/Less than 0.5 percent.

JOINT-SERVICE STUDY GROUP ALSO FOUND  
DISPARITIES IN DISCHARGES IMPOSED

In September 1977 the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) commissioned a comprehensive study of the administrative discharge system. <sup>1/</sup> Among the issues addressed were the need for the honorable discharge and the three-tiered administrative discharge system. The study was made with a view toward accommodating, coordinating, and balancing the many varied interests affected by the system. This study was intended to satisfy, in large part, the commitment made to the Congress to study the discharge system as a result of a January 1977 GAO report <sup>2/</sup> concerning costs associated with the apprehension of military deserters.

The 1978 Joint-Service Study Group, in its report, made the following comments on the implication of disparities in the administrative discharge system.

"Another due process consideration of principal concern to this study is the consistency of uniformity of assignment of reasons for discharge and application of the characterization based on the DOD directive. If individuals are disqualified for further service for the same actual cause, but are separated from the Services for a different listed reason and with different types of characterizations of discharges, a due process or equal protection challenge to the system could be lodged, particularly where there is no rational basis for these differences." (Underscoring supplied.)

The group found that, between fiscal years 1972 and 1977, the overall percent of honorable discharges issued had decreased dramatically. In the Army and the Navy, this decrease was combined with a corresponding increase in the percentage of general discharges. In the Marine Corps, the decrease in honorable discharges was offset by a corresponding increase in the number of discharges imposed under

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<sup>1/</sup>See note 1 on p. 8.

<sup>2/</sup>Report to the Secretary of Defense, "Millions Being Spent to Apprehend Military Deserters Most of Whom are Discharged as Unqualified for Retention." (FPCD-77-16, Jan. 31, 1977)

policy guidance in appropriate areas is intended to minimize variances among the Services, especially in regard to characterization of service." (Underscoring supplied.)

The group felt that the current three-tiered administrative discharge system should be retained but that changes were needed in the directive to achieve greater uniformity among the services. Above all, the system must "comport with the time-honored military custom and strong military tradition of honoring good and faithful service at the end of a period of service." Changes being considered to DOD Directive 1332.14 based on the group's proposals include:

- Providing a more definitive statement as to what constitutes honorable service. The present directive contains no positive statement of purpose regarding standards of performance and conduct underlying an honorable discharge, except the generalization for good and faithful service and proper military behavior and proficient performance of duty. The study group proposed that honorable service be defined as the "basic designation used to recognize the manner in which a service-member performed his/her service, based upon a wide and variable range of related attributes, such as courage, fidelity, honesty, trustworthiness, and effectiveness, as subjectively measured within the military chain of command."
- Requiring that persons separated for marginal performance and unsuitability, who have served over 179 days, be issued only honorable discharges. The group agreed that a general discharge carried a stigma and that it should not be issued to people separated essentially for reasons beyond their control.
- Requiring that persons separated for misconduct or discharged in lieu of court-martial receive only general discharges or discharges under other than honorable conditions. The group considered it " \* \* \* absolutely ludicrous to reward an individual with an Honorable discharge when the individual is separated for misconduct."
- Not characterizing a member's term of service when it has been of insufficient length to warrant characterization or when unusual circumstances indicate an inconsistency with the concept of characterization.

Personality disorder accounted for 62 percent of all separations for unsuitability in 1972 but dropped to 37 percent by 1977. Also a noticeable shift took place in the Army, Air Force, and Marine Corps away from general discharges toward issuing predominately honorable discharges.

Apathy accounted for 19 percent of all discharges for unsuitability in 1972 and 17 percent in 1977. While the Air Force and the Marine Corps shifted toward giving increasing numbers of honorable discharges for apathy, the Navy shifted in the opposite direction, giving 15 percent of those separated for apathy honorable discharges in 1977 contrasted with 76 percent in 1972.

Inaptitude was the third major reason in the unsuitability category in 1972 and the fourth major reason in 1977. While the Army and Marine Corps characterizations of those discharged for inaptitude remained fairly constant, over three-fourths of those separated for inaptitude in the Marine Corps received honorable discharges. In contrast, the Navy issued general discharges to 41 percent of those separated for inaptitude in 1972, whereas in 1977 everyone separated for inaptitude received honorable discharges. By 1977 the Air Force had practically stopped using inaptitude as a reason for separation.

The study group found similar variances within and among the services in analyzing separation trends for misconduct.

#### Study group's conclusions and recommendations

The group concluded that the principal cause for the disparities among the services in both the reasons used and types of discharge imposed was that DOD had not provided sufficient policy guidance but only a broad framework within which the services fashioned their relatively independent implementing instructions. The study group's report states:

"\* \* \* While earlier versions of the directive provided a skeletal structure around which the Services could build, uniform policy guidance was lacking in most areas. This resulted in disparate policies between the Services which could not be justified by legitimate Service differences. While the group realistically recognizes that the Services will never be precisely the same in the area, inclusions of

four services combined vary according to recruit category, ranging from about 4 percent for high school graduates in the higher mental categories to about 35 percent for non-high-school graduates in the lowest mental category. Analysis of AWOL rates in each service shows this same trend; that is, better educated and more intelligent people are less likely to go AWOL. As shown in the chart on the following page, the estimated rates range from less than 1 percent for Air Force high school graduates in the highest mental category to 60 percent for Marine Corps non-high-school graduates in the lowest mental category.

To meet end strength, the services accept individuals who they know have a low probability for success. Since 1974 the services have, on the average, recruited more qualified people than in preceding years. This has been accompanied by aggressive action to separate substandard personnel. To illustrate, in 1975 the Marine Corps acknowledged it had a personnel quality problem. Its AWOL and desertion rates were significantly higher than those of the other services. These and other problems were felt to stem from the past acceptance of excessive numbers of low-quality applicants. As a result, the Marine Corps abolished obstacles tending to inhibit commanders from administratively discharging problem people and began an expeditious discharge program for marginal performers.

--Requiring that court-martial charges be filed against a member before he can request a discharge in lieu of court-martial. Presently the member only has to be involved in conduct which renders him triable by court-martial for an offense punishable by a punitive discharge. The group stated that this language had been interpreted differently by the services and was one basis for our recommendation (FPCD-77-47, Apr. 1978) to eliminate discharges in lieu of court-martial.

In commenting on the proposals in a September 27, 1978, memorandum, the Assistant Secretary of the Army (Manpower and Reserve Affairs) stated that the Army would prefer a two-tiered system which would discontinue the use of the general discharge. He strongly urged that if this was not feasible, a much more restrictive, definitive, and uniform policy for the three-tiered system be implemented. He further stated that:

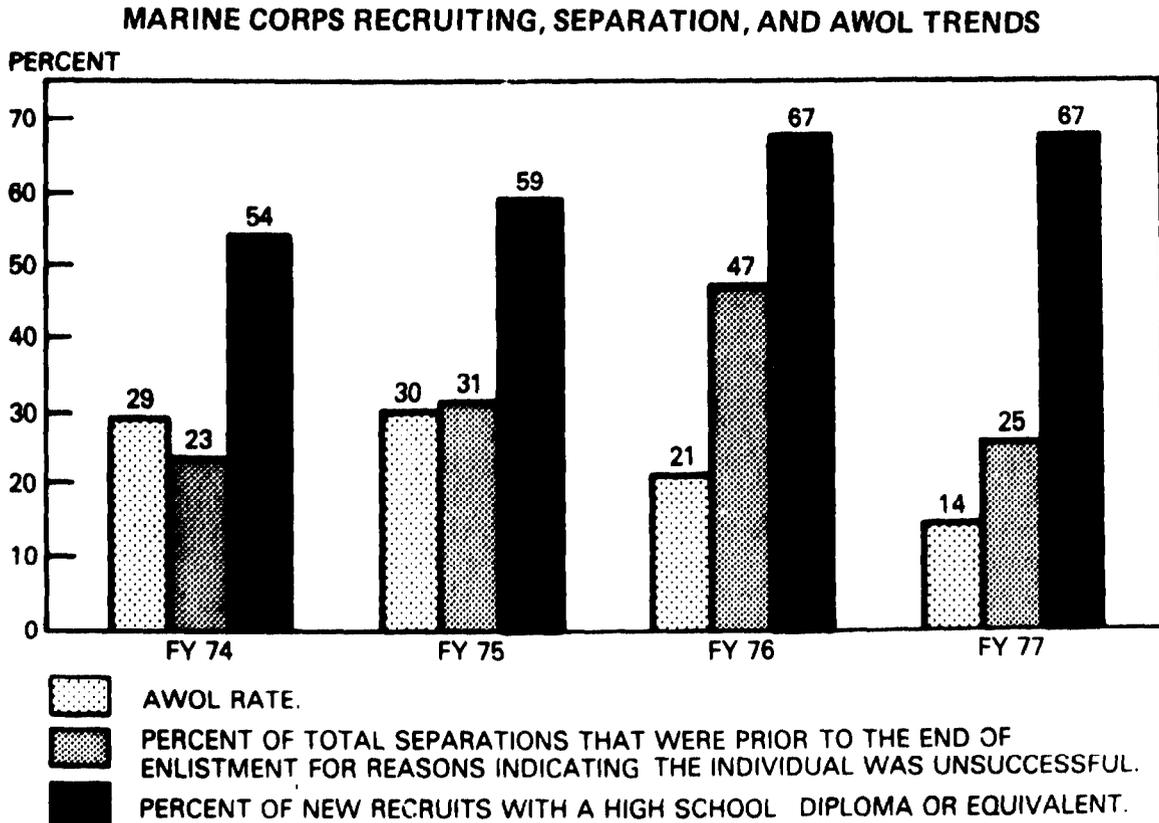
"\* \* \* Much of the criticism and abuses of the current system can be attributed to local implementation where subjective decisions determine characterizations, due to a lack of definitive guidance and guidelines."

SERVICES' ABILITY TO ATTRACT QUALITY  
RECRUITS AFFECTS RATES OF LESS  
THAN HONORABLE DISCHARGES IMPOSED

Many of those separated for reasons authorizing less than honorable discharges have AWOL histories. According to the study group's report, absentee offenses account for the large majority of those discharged in lieu of court-martial, and these people run a 90-percent chance of receiving a discharge under other than honorable conditions. Non-high-school graduates have a much higher probability of going AWOL than high school graduates. Therefore, recruit quality and the percent of people separated with less than fully honorable discharges are closely related. Recruiters do not routinely tell prospective recruits, however, the risk they run of being involuntarily separated for adverse reasons or of the potentially severe consequences of less than honorable discharges.

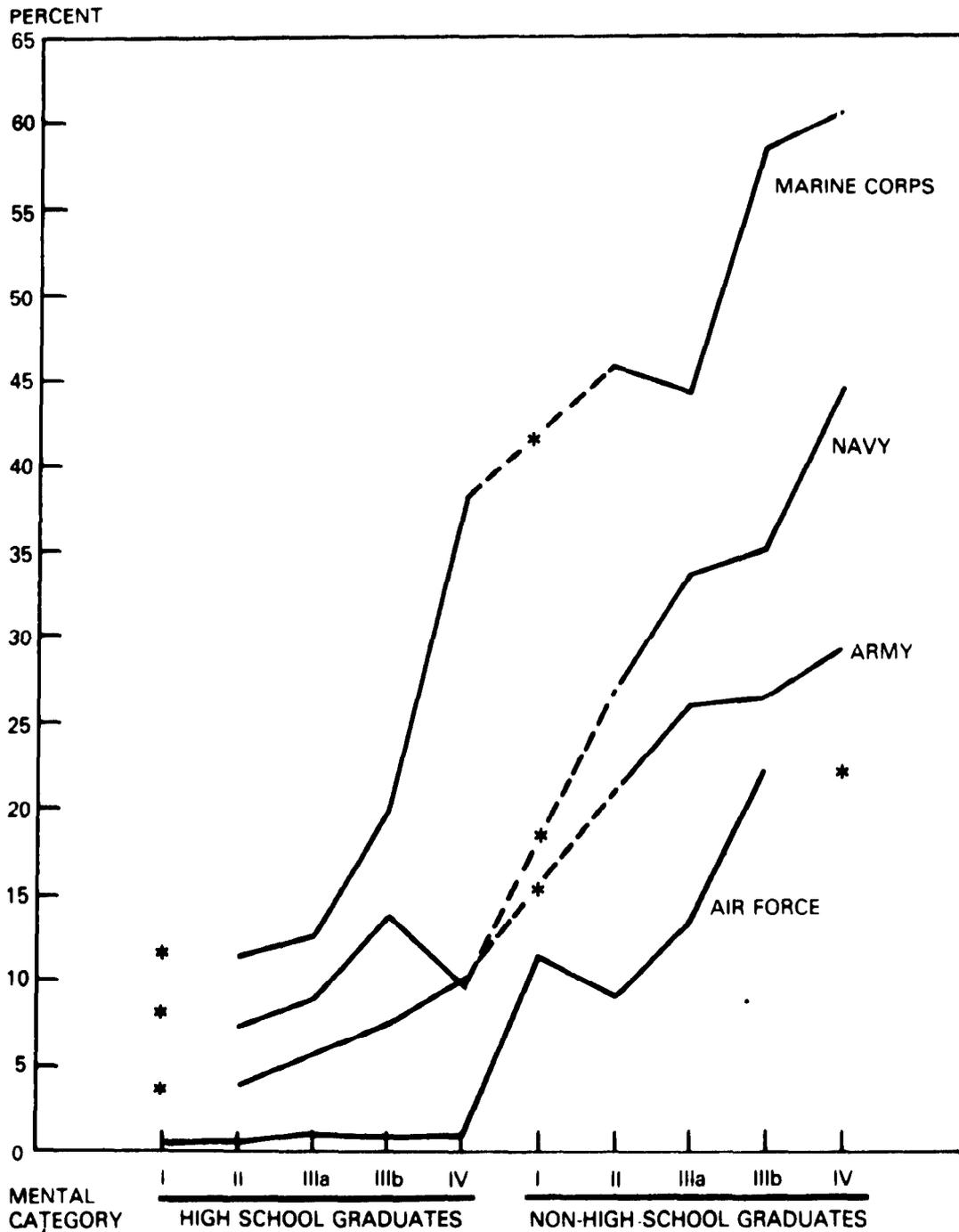
While education and mental aptitude will not specifically identify individuals who will go AWOL, they do provide a basis for estimating comparative AWOL rates. As shown in our AWOL report, the estimated annual AWOL rates for all

As illustrated below the marked decrease in the Marine Corps' AWOL rate since 1975 corresponds with a sharp increase in the percent of high school graduates enlisting and Marines discharged before the end of their enlistment for reasons indicating lack of success.



As shown previously the highest percent of people separated for reasons indicating lack of success occurred in 1976. Also in that year, the Marine Corps awarded the lowest percent of honorable discharges and the highest percent of discharges under other than honorable conditions (73 and 14 percent, respectively) than in any year since 1967.

**ESTIMATED AWOL RATES OF INDIVIDUALS WITH  
30 MONTHS' SERVICE OR LESS SHOWN BY QUALITY OF  
RECRUIT FOR EACH SERVICE DURING GAO'S STUDY PERIOD**



**NOTE:** DOD divides recruits into 10 groups: high school graduates, mental categories I, II, IIIa, IIIb, and IV; and non-high-school graduates, mental categories I, II, IIIa, IIIb, and IV. Top-quality recruits are considered by DOD to be high school graduates in mental categories I through IIIa.

adverse reasons in the other services received less than honorable discharges--ranging from 51 percent in the Army to 67 percent in the Marine Corps.

Once AWOL-prone people are identified, the Marine Corps retains them longer than the Air Force. This partially explains why the Marine Corps separates larger proportions of people with discharges under other than honorable conditions because the individual can build up a longer and more serious AWOL record. Nevertheless, the probability of people with similar AWOL and conviction records getting honorable discharges in the Air Force is about 13 times greater than in the Marine Corps. Considering that less than honorable discharges result in prejudice in civilian life and may hurt future job opportunities and eligibility for veterans' benefits, such disparities in the types of discharge imposed under similar circumstances appear to be unfair.

The recommendations of the congressional Committees would standardize the basis of the honorable discharge across the services. While we believe the present system of imposing discharges could be improved, standardization will be difficult to obtain due to the system's subjective nature. Regardless of how definitive and restrictive the policy guidance is, differing attitudes will continue among the services and commanders within a service, which will make it difficult to achieve uniform implementation. As a result of these differing attitudes and philosophies, many of those with less than honorable discharges may have better service records than some who have received honorable discharges.

DOD has proposed alternatives to the present processes that appear to conflict with the congressional Committees' intent. The proposals of the study group would reduce the probability that service members will receive general discharges in the future by awarding more honorable discharges. For example, one proposal would require that everybody separated for marginal performance and unsuitability who served over 179 days receive an honorable discharge. One reason for marginal performance is performance "which has been noncontributory to unit readiness and mission accomplishment as specifically evidenced by below average efficiency ratings or specific demonstrated incapacity to meet effectiveness standards."

## CONCLUSIONS

There is no overall uniformity in the discharges imposed on people with similar records. The congressional Committees on Appropriations recently expressed their concern over the differences among the services in the application of DOD guidelines controlling discharges. These Committees made recommendations to the Secretary of Defense that would minimize these differences and help restore integrity to the honorable discharge.

Disparities in the discharges imposed among the services and within the same service over time are serious and longstanding. The type of problems found indicate that reasonable consistency in the discharges imposed has never been achieved since the three-tiered administrative discharge system was adopted by all the services in 1947. Historically, broad discretion has been given to those making separation decisions in the absence of definitive policy guidance. Commanders can, when they desire, exact retribution by the types of discharge imposed on those unable or unwilling to adjust to military life or can simply separate individuals in the most expeditious manner because they are not willing to take the time to separate them for the correct reasons. In the former case the individuals may receive discharges which can affect employment opportunities upon returning to civilian life and eligibility for veterans' benefits. In the latter case individuals may get honorable discharges which they do not deserve and be eligible for veterans' benefits.

In addition, each service has its own discharge philosophies and practices which the 1978 Joint-Service Study Group concluded cannot be justified by legitimate differences in service missions. Also each service experiences different degrees of success in recruiting quality people, which influences the rate at which members will be separated before the end of their enlistment for adverse reasons and the percent of less than honorable discharges imposed.

The Air Force has traditionally given a greater, and the Marine Corps a lesser, percent of honorable discharges than the other services. In 1977 about 99 percent of those discharged for all reasons from the Air Force received honorable discharges as contrasted with 84 percent in the Marine Corps. While the Air Force separates people for adverse reasons less than half as often as the other services, four out of five of these receive honorable discharges. In contrast, the majority of those separated for

## CHAPTER 4

### SEVERITY OF LESS THAN HONORABLE DISCHARGES

#### WHOM THEY AFFECT, AND OTHER CONCERNS

Less than fully honorable discharges can have severe consequences whether they are imposed under the administrative or judicial process. They hinder the recipients from finding gainful employment upon returning to civilian life. Those most frequently affected are the less educated and minorities, who are already at a competitive disadvantage in the labor market. DOD has expressed its awareness of the problems, including the fact that they are used in ways not intended. However, DOD's position is that the three-tiered administrative discharge system should be retained in basically its present form.

Since enactment of the Uniform Code of Military Justice in 1950, the Congress has on a number of occasions expressed concern that the administrative discharge system is being used to circumvent the fundamental protections of the code. Yet some military authorities have urged commanders to use the administrative process whenever possible to alleviate the workload of military courts.

#### EFFECTS OF LESS THAN HONORABLE ADMINISTRATIVE DISCHARGES ARE SIMILAR TO THOSE IMPOSED BY COURT-MARTIAL

The effects of less than honorable discharges on persons after they return to civilian life are substantial. Many recipients of them encounter prejudice in civilian life, and their opportunities for civilian employment and veterans' benefits are limited. A recent Federal court decision 1/ ordered the Army to automatically upgrade 10,000 less than honorable discharges to honorable because the individuals' rights involving a drug test had been violated. The judge stated that a general discharge based on drug abuse is " \* \* \* punitive in nature. It is a lifetime stigma which adversely affects the service member's reputation and standing in the community and causes him embarrassment and a loss of self-esteem."

The services recognize the consequences of a discharge under other than honorable conditions. DOD's standard enlistment document--signed by the prospective member at enlistment but before induction--states:

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1/Giles v. Secretary of the Army.

By adopting the study group's changes, DOD and the services would relinquish any notion that the honorable discharge can be relied on to attest to the recipient's quality of service. Nor would the honorable discharge certificate always serve as a "testimonial of honest and faithful service," as the inscription reads today.

The forward to a research paper appearing in the Military Law Review 1/ on the gravity of administrative discharges states:

"The consequences of the general and undesirable discharges are frequently little considered by their recipients. Similarly they are little understood by the JAG [judge advocate general] officers asked to 'counsel' the recipients. The author examines the consequences of the administrative discharge from the standpoint of governmental benefits lost and civilian opportunities prejudiced. A survey of employers, unions, colleges, and professional examiners reveals some of the difficulties facing the serviceman discharged under other than honorable conditions."  
(Underscoring supplied.)

The effects of punitive discharges is set forth in the Department of the Army Pamphlet No. 27-9, Military Judges' Guide, in the section containing instructions regarding punishments that can be read to either counsel or members of the court. It states:

"The court is advised that the ineradicable stigma of a punitive discharge is commonly recognized by our society and the repugnance with which it is regarded is evidenced by the limitations which it places on employment opportunities and other advantages which are enjoyed by one whose discharge characterization indicates that he has served honorably. A punitive discharge will clearly affect an accused's future with regard to his legal rights, economic opportunities, and social acceptability."

\* \* \* \* \*

"\* \* \* You should bear in mind that either type of punitive discharge and its consequences remain with the accused for the rest of his life, whereas the (period of confinement once served)

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1/"The Gravity of Administrative Discharges: A Legal and Empirical Evaluation," Major Bradley K. Jones, U.S. Army, Military Law Review, vol. 59, Winter 1973, Department of the Army Pamphlet 27-100-59.

"\* \* \* My enlistment is more than an employment agreement. As a member of the Armed Forces of the United States, I will be \* \* \* Subject to separation during or at the end of my enlistment. If my behavior fails to meet acceptable military standards, I may be discharged and given a certificate for less than honorable service, which may hurt my future job opportunities and my claim for veteran's benefits." (Underscoring supplied.)

In their justification for requiring that all persons discharged for reasons of marginal performance and unsuitability be awarded honorable discharges, the 1978 Joint-Service Study Group stated:

"The reason behind this recommendation is the Study Group's belief that individuals who are separated because of factors normally of a non-voluntary nature apparently beyond the control of the member which make retention incompatible with the best interest of the Service should not form a basis for stigmatizing such individuals with a General separation." (Underscoring supplied.)

The Army's application for a discharge in lieu of court-martial states:

"I understand that, if my request for discharge is accepted, I may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Discharge Certificate. I have been advised and understand the possible effects of an Under Other Than Honorable Discharge, and that, as a result of the issuance of such a discharge, I will be deprived of many or all Army benefits, that I may be ineligible for many or all benefits administered by the Veterans Administration, and that I may be deprived of my rights and benefits as a veteran under both Federal and State law. I also understand that I may expect to encounter substantial prejudice in civilian life because of an Under Other Than Honorable Discharge." (Underscoring supplied.)

individual with a general discharge should not be "disadvantaged by this characterization in perpetuity" and that the 3- to 5-year period is "sufficient denial of first-class citizen status."

For purposes of establishing eligibility for benefits, the Veterans Administration subjects the discharge under other than honorable conditions to the same type of review as a bad conduct discharge imposed by a special court-martial. If the discharge under other than honorable conditions is given to avoid trial by a general court-martial, it is considered to have been imposed under dishonorable conditions and benefits are denied as if it was a dishonorable discharge. People separated with honorable and general discharges are eligible for many veterans' benefits without review if they have served over 179 days. (See app. IV for benefits for which eligibility is dependent on service characterization.)

LESS THAN HONORABLE DISCHARGES  
DISPROPORTIONATELY AFFECT THE YOUNG,  
THE LESS EDUCATED, AND MINORITY  
SERVICE MEMBERS

During the 1975 hearings, <sup>1/</sup> one congressman made the following comments regarding individuals with less than honorable discharges and how they are affected:

"While there are specific immediate harmful consequences which flow from a negative discharge none is more pernicious than the stigmatizing effect of an unfavorable discharge which impugns the dischargee's character and competence for life. Young men or boys, 18 or 19 years old, who may know little about what it is like to be away from home, how to work, how to handle themselves, what they want out of life, or really who they are, ought to be expected to have some problems. It has been the misfortune of many, however, that they were in service to their Nation when they were still maturing. Some of the reasons for giving stigmatizing discharges

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<sup>1/</sup>Hearings on Administrative Discharge Procedures and Discharge Review Before the Subcommittee on Military Personnel, House Committee on Armed Services, 94th Cong., 2d sess. (1975).

(or) (money once forfeited) does not have the same ineradicable stigma. (In this connection, you are advised that as a matter of law a sentence to confinement at hard labor for one year and forfeiture of all pay and allowances for a like period is a less severe penalty than a bad conduct discharge.) \* \* \*" (Underscoring supplied.)

In 1972 the Secretary of Defense commissioned a task force 1/ to evaluate the administration of military justice in the Armed Forces. The task force consisted of 14 members including the Judge Advocates General of the Army, Navy, and Air Force and the director of the Marine Corps Judge Advocate Division.

The task force concluded that the consequences of a discharge under other than honorable conditions are about as severe as those imposed by a military court, and stringent safeguards are needed in their use.

"The stigma of a less than honorable discharge has long been recognized. It has, in fact, severe ramifications for the person receiving it. The undesirable discharge is virtually indistinguishable in the public mind from a punitive discharge (bad conduct or dishonorable discharge) and has the added disadvantage of not containing a stated reason for the discharge \* \* \*. Moreover, most employers refuse to hire job applicants who possess less than honorable discharges. In practical effect, such a discharge becomes a burdensome cross to bear, and, for this reason, its issuance should result only after compliance with stringent procedures designed to safeguard the rights of the respondent." (Underscoring supplied.)

In the Army's response to proposals made by the 1978 Joint-Service Study Group, the Assistant Secretary of the Army (Manpower and Reserve Affairs) strongly urged an automatic upgrade of the general discharge to honorable after 3 to 5 years of service if the general discharge was to be retained. This position was based on the premise that the

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1/"Report of the Task Force on the Administration of Military Justice in the Armed Forces," Department of Defense, Nov. 30, 1972.

A primary objective of the 1972 task force was to identify the extent of any racial discrimination in the administration of military justice. The task force found that in fiscal year 1971 blacks received a higher proportion of general and undesirable discharges than whites of similar aptitude and education. It concluded that the administrative discharge system worked to the detriment of minority service members.

Because of the disparities found based on race, half the task force members recommended that administrative discharge characterizations be eliminated. Although the task force was divided on this point, it agreed that changes were needed to provide for greater protection of the serviceman's fundamental rights.

Some task force members believed that the administrative discharge system had become a punitive means for separating people judged ineffective and that the services accrued little benefit from the actions taken. The task force report stated:

"Many minority servicemen feel that administrative eliminations are used unfairly to separate minority group members who are believed by their commanders to be 'outspoken' or 'militant'. A number of minority servicemen reported that they had observed such instances and that frequently the victims had become so harassed by the command that they are willing to let themselves be separated without contesting the elimination. \* \* \*

"\* \* \* Some argue that to further burden individuals who have demonstrated great difficulty in conforming to military service norms does an injustice to them and to society at large when they return to civilian life and find themselves virtually unemployable. This would have particular application to minority group individuals. Because of prior deprivation, educationally and economically, most often caused by racial discrimination, the minority group member is at a competitive disadvantage from the outset. With the addition of a less than honorable discharge, or even a general discharge, the opportunities for gainful employment markedly diminish. A procedure originally designed to separate those persons who do not contribute to the efficient functioning of the armed forces has become, in reality, a punitive sanction for the individual

are for behavior which is explainable and transitory, others, far fewer, for serious reprehensible crimes."

\* \* \* \* \*

"The psychological and sociological implications of the 'undesirable' label are very severe. The term and the discharge 'undesirable' is perceived as the United States Armed Forces' judgment (and damnation) of a man's character bearing the full weight and authority of the U.S. Government. It is the mistake of a man's youth that will haunt him forever: affecting the respect of his family, his standing in the community, impeding his effort to regain a productive and meaningful role in society. The bad discharge is a constant reinforcement of a negative self-image, a reminder that the individual is 'unsuitable, unfit or undesirable' in the eyes of his country, and that his character, loyalty, and competence are frequently subject to question."

\* \* \* \* \*

"The combination of penalties imposed by other than honorable discharges consign many veterans to a hopeless cycle of: Joblessness, perpetual underemployment, drug addiction, chronic disease and despair, a life of poverty, crime and imprisonment." (Underscoring supplied.)

As stated in an earlier GAO report, 1/ members often accept administrative discharges when not required to do so because they want to get out of the service and may be unaware of its potentially severe and long-lasting consequences. The cost borne by society is heavy to the extent that these individuals encounter difficulties in finding employment and being productive and self-sufficient upon their return to civilian life. Many of those receiving less than honorable discharges are the ones who can afford it the least--the less educated and minorities--who are already at a competitive disadvantage in the labor market.

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1/Report to the Congress, "Eliminate Administrative Discharges in Lieu of Court-Martial: Guidance for Plea Agreements in Military Courts is Needed" (FPCD-77-47, Apr. 28, 1978).

"No rating of the quality of his service is usually given and no statement as to the reason for his separation from the company \* \* \*. If connections are close enough, the prospective employer may make inquiries of the former employer as to the character and efficiency of the aspirant for the job, but such information is usually given out with reserve and only to responsible persons. The personal habits and traits of character of the former employee are not assessed, and individuals are not graded for public consumption.

"It is obvious that industry in general does not feel it has the right to brand even an unsatisfactory wage earner for the rest of his life and make it difficult for him ever to get another decent job." (Underscoring supplied.)

The 1978 Joint-Service Study Group concluded that discharge characterizations are used in a variety of ways in the civilian sector, although DOD did not design characterization for this purpose. According to the group several empirical studies of employer attitudes toward hiring veterans have reached the same conclusions.

--Employers prefer honorably discharged veterans to other applicants.

--Employers prefer other applicants to veterans with less than honorable discharges.

--Among less than honorably discharged veterans, there is a distinct hierarchy of employer preference which parallels the severity of the discharges.

The group adds, however, that, although major studies agree, they do not lead directly to conclusions about the reasons for employer preferences. None of the studies asks why the employer prefers one type of discharge to another or even whether a similar reaction to nonveterans might occur if similar, unflattering things were known about their previous employment.

involved, but with little positive benefit accruing to the services from the unfavorable discharge characterization." (Underscoring supplied.)

The 1978 Joint-Service Study Group reinforced the earlier findings on the disproportionate impact of the system based on race. This group found that blacks received twice the percent of other than honorable discharges--including bad conduct and dishonorable--than would be expected by their percent of the military population. Further, non-high-school graduates are more than twice as likely to receive less than honorable discharges than their percent of the population would suggest. Overall, those not receiving honorable discharges tend to be high school dropouts in the lower mental categories.

LESS THAN HONORABLE DISCHARGES  
LIMIT EMPLOYMENT OPPORTUNITIES

Concern over less than honorable discharges limiting employment opportunities is longstanding. In 1946 a study by a House Subcommittee <sup>1/</sup> concluded that the adverse characterization of military service limited civilian employment opportunities and was out of step with industry practice.

"Industry appears more humane than the Army in connection with discharges. It does not set itself up to interdict a man whom it finds unsatisfactory from ever attaining a successful future by stigmatizing either his ability or his character \* \* \*. The man who leaves employment because the work is finished and the company no longer needs his service, or who leaves voluntarily, or who is discharged because he is unsatisfactory, is given a simple document containing little, if any, more than this information about him: his name; the capacity in which he was employed; the period of service during which he was employed.

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<sup>1/</sup>House Report 1510, 79th Cong., 2d sess., 9-10 (1946), of Joint Hearings on Bills, To Improve the Administration of Justice in the Armed Forces Before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary and a Special Subcommittee of the Senate Committee on Armed Services.

would not automatically bar employment; however, they would seek alternative ways of obtaining this information.

--Users of the report would not arbitrarily eliminate an individual from further employment consideration who had not performed well in the military. They would attempt to determine the circumstances surrounding the individual's character of service and judge each case on its own merits. Most acknowledged, however, that a veteran who had not done well in the military would face difficulty in obtaining employment.

--Generally users of the report stated they would not like to see any information removed from the form. Some felt that it did not adequately describe the individual's work experience in the military, job training, or education received in the service.

Employment problems confronting veterans who had not done well in the military were reinforced by the comments of Government and private agencies providing assistance to veterans. We were told that many employers would not hire an individual whose military service was not characterized as honorable. Even those who have received general discharges "under honorable conditions" face employment discrimination. The agencies said that they (1) simply did not refer holders of adverse discharges to certain employers, because it was considered a waste of time for the veterans, prospective employers, and placement officers, (2) encouraged veterans to seek upgrading of their discharges, and (3) had occasionally advised veterans having short periods of time in the service not to reflect their service on employment application forms.

The survey results indicated that the separation report gives employers considerably more information than civilian employers would provide on their former employees. Normally, the employers limit information provided to others to title or position held, period of employment, and salary received.

DOD's separation report has been improved but still provides for public access to adverse information

In response to our report on DOD's separation report, DOD introduced a revised DD 214 in October 1979. The new certificate provides prospective employers with a resume of a service member's training and education, along with his awards and decorations. The copy given the member

Our report also shows that  
judgments made by the military  
affect employment opportunities

Illustrative of more recent congressional concern over this problem is reflected in our previous report 1/ prepared at the request of the Chairman, Senate Committee on Armed Services, regarding the need for uses of data recorded on Form DD 214. This is a summary record of an individual's military service given to all personnel released from active duty.

The most prevalent and potentially adverse use of the separation report occurs in dealings with prospective employers. Of the 111 employers interviewed--including local, county, and State agencies--63 required veterans to produce separation reports as part of the job application process. According to a number of prospective employers, a veteran's failure to do so would cause his being eliminated from further employment consideration. To these prospective employers, the separation report provided information with which to judge the veteran's character and work skills.

Specifically, the responses disclosed that:

--All 111 prospective employers routinely asked for military data on their employment applications. Information typically requested involves the period of military service, rank attained, branch of service, type of discharge, and character of service.

--63 employers (57 percent of those surveyed) required the veteran to produce his separation report. These employers stated that the report was necessary to verify the information on the employment application, obtain insight into the individual's character, and identify his training and work experience received in the service.

--31 employers who required the report stated that a veteran's failure to make it available would result in his being eliminated from further employment consideration. Seventeen others stated that refusal

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1/"Need For and Uses of Data Recorded on DD Form 214 Report of Separation From Active Duty" (FPCD-75-126, Jan. 23, 1975).

--The National Personnel Record Center and Army Reserve Components Center were required to provide timely responses to inquires.

SERVICE CHARACTERIZATIONS ARE USED  
TO DETERMINE ELIGIBILITY FOR  
VETERANS' BENEFITS

Federal and State government agencies administer programs that aid the service veteran in readjusting to civilian life and as compensation for the time spent in the service. Federal statutes authorize benefits ranging from paying transportation home after discharge to educational assistance and loan guaranties. (See app. IV.)

Authorizing legislation for most Federal veterans' benefits requires that the agency determine the former service member's eligibility based on the character of his military service. In practice, these agencies have linked eligibility for the programs they administer to the type of discharge and reason for separation determined by the military departments. This information is routinely distributed to the VA and the Department of Labor by the services or, as noted above, the former service member may use his separation report as evidence of discharge and service characterization. In most instances, veterans who serve more than 179 days and receive an honorable or general discharge qualify for Federal benefits without further review. Former members with discharges under other than honorable conditions or one imposed by court-martial may qualify for certain benefits if, on review, the respective agency determines that the discharge was issued under other than dishonorable conditions. A dishonorable discharge automatically bars the recipient from receiving Federal veterans' benefits.

Veterans are required to provide separation reports in seeking unemployment compensation, job counseling, and employment assistance of State employment service offices funded by the Department of Labor. The report is used to determine if the veteran is eligible for assistance and to expedite the eligibility determination process because the State employment service offices do not receive the separation report.

States also provide unemployment compensation to recently separated veterans for a limited period of time while the veterans are searching for employment. To be automatically eligible, a veteran must have served at least 90 days of continuous active duty and have his service characterized as honorable or under honorable conditions. Veterans whose

on release from active duty excludes potentially adverse information on the type of discharge. DOD believes this document will provide an acceptable record of military service. However, former service members can request another copy of the new form which does contain type of discharge, reason for separation, and other derogatory information.

DOD's action will (1) eliminate the routine distribution of adverse information to all individuals released from the services and (2) provide former service members with a document describing their work experience, training, and education which should assist them in seeking civilian employment.

In October 1979 the VA issued guidance describing changes in acceptable evidence for determination of benefit eligibility based on the new separation report. The copy given the service member at separation will not be acceptable because it does not contain character of service and type of discharge information. The copy automatically sent VA by the services and the optional copy available to the service member are acceptable. VA has asked that DOD advise service members they should request the optional copy at the time they are separated from service if they plan to file a claim soon thereafter. If VA's request results in widespread distribution of the optional form, the positive benefits of DOD's limiting distribution of derogatory information will be largely negated. Additionally, the optional form contains other information not required by VA that could be used to the detriment of the service member--separation authority, separation code, and reenlistment code.

DOD's action also does not preclude civilian employers and organizations from requesting the former service member to provide the separation report copy with the adverse information. DOD will need to closely monitor the use of the additional copy to prevent it from being used to differentiate among former service members in ways not intended.

We believe the adverse information available on request by the former service member would not be needed at all if the Secretary of Defense devised alternative methods of providing needed information to former service members and Government agencies in administering benefits to veterans. In our prior report we concluded that the separation report would not be needed by veterans if:

- The VA eligibility system was expanded to provide all veterans with information concerning their eligibility for veterans' benefits.

Proponents of the present administrative discharge system contend that it is an expedient way of getting rid of problem people and is needed to maintain discipline because referring all cases which involve criminal wrongdoing to a court-martial would greatly increase the workload of an already overtaxed judicial system.

We believe:

- The legislative history of the code does not support that the Congress intended expediency in dealing with criminal wrongdoing. Rather, the Congress on numerous occasions has specifically warned against using the administrative discharge system to circumvent the judicial process. Yet this is clearly happening, as shown by statistics over the past few years reflecting a dramatic increase in the number of discharges under other than honorable conditions imposed in relation to the number of punitive discharges imposed by court-martial.
- Commanders have disciplinary tools available to them under a nonjudicial procedure to punish offenders when they feel a court-martial is not warranted. These punishments include reduction in rank and forfeiture of pay, which should be effective in punishing minor offenses and deterring others from committing them. Since some alleged offenders may view any administrative discharge as an expedient way out of the service, we question whether less than honorable discharges are effective in maintaining discipline or as a deterrent.
- Discharges to avoid court-martial are examples of cases when criminal offenses are directly dealt with through the administrative discharge system. We have recommended that the Secretary of Defense stop using these discharges and deal with alleged criminal wrongdoing in a manner consistent with the code. When they are used, the issue of guilt is never resolved although the suspicion of guilt remains. They are no bargain for the accused in the long run because they run a better than 90-percent chance of receiving a discharge under other than honorable conditions.

service has been characterized as dishonorable are automatically ineligible, and those who have served under less than honorable conditions are referred to the VA for eligibility determinations.

Job counseling and employment placement programs give veterans a preference over others when using employment services. Veterans with dishonorable discharges are not eligible for preferential treatment. State employment service offices use the separation report to assist them in making this determination.

Recently hearings were held to consider a bill to deny veterans' benefits to certain former service members (H.R. 4367, 96th Cong.). The bill provides that benefits should be available only to those who complete their initial obligated tour. This legislation would, in effect, base benefit eligibility on length of service rather than character of service and type of discharge. This departure from tradition would greatly reduce the administrative need to characterize military service.

CONCERN OVER DEALING WITH  
CRIMINAL WRONGDOING THROUGH  
ADMINISTRATIVE DISCHARGES

With the enactment of the code in 1950, the services became subject to the same law. The legislative history shows that this law was to provide a new and better system of justice by insuring that there would be no disparities among the services in administering justice. With the code's enactment, attention was drawn to the administrative discharge system because of its potential for treating conduct cognizable under the code. For example, sodomy is a violation of article 125 of the code, but homosexual conduct, which includes sodomy, is a basis for administratively discharging people. As a result, cases of sodomy are sometimes handled under the code and other times through the administrative discharge system. Some Members of Congress and the military have expressed concern that some people are administratively discharged who should stand trial.

Supporters of the administrative discharge system argue that there is no need for the administrative and judicial processes to parallel in terms of safeguards, since a finding of guilty by court-martial is a Federal conviction and the sentence can include confinement in addition to a punitive discharge.

made it clear that using the administrative system to circumvent the protections provided by the code would be viewed as an encroachment on the rights of military people. The report 1/ states:

"\* \* \* to the extent that the armed services use administrative action to circumvent protections provided by the Uniform Code, the intent of Congress is thwarted and the constitutional rights of service personnel are jeopardized."

A 1971 report 2/ on legislation proposed by the House Committee on Armed Services stated that over the years many individual Members of Congress, as well as congressional committees and bar associations, have been concerned about repeated complaints of administrative discharge practices. Cases were reported alleging that administrative separations were being used as a substitute for punitive action. This Committee was concerned about this problem because of the potentially serious consequences of discharges under conditions other than honorable.

Notwithstanding these warnings, some military authorities have encouraged commanders to use the administrative discharge process whenever possible. In two memorandums to his unit commanders in 1974, the Commanding General at Fort Riley, Kansas, expressed concern over the high rate of courts-martial in his command. He stated that a comparative analysis indicated that Fort Riley commanders referred cases to summary courts-martial far more often than commanders at other installations and "\* \* \* our present methods and procedures are being revealed as inadequate and the condition must be remedied." He further stated that "\* \* \* it is appropriate to refresh commanders of the steps they must take to reduce court-martial rates and conserve manpower." One avenue he mentioned for doing this was to administratively separate chronic offenders.

A February 18, 1975, letter from the Army Judge Advocate General to field commanders and staff judge advocates

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1/ Subcommittee on Constitutional Rights, Senate Committee on the Judiciary, "Constitutional Rights of Military Personnel/Summary-Report of Hearings," pursuant to S. Res. 58, 88th Cong., 1st sess., pp. IV and V (1963).

2/ H. Rept. 92-496, 92d Cong., 1st sess., (1971).

Use of administrative discharges  
to deal with criminal offenses  
is contrary to congressional intent

The code was adopted to provide the same law and procedures for all military persons accused of crimes, and the Congress has warned against using the administrative discharge system to deal with crimes.

A 1959 report by the House Committee on Armed Services 1/ condemned:

"\* \* \* the development of an alarming trend in the administration of justice in the armed services \* \* \*. As the punitive rate pursuant to sentences of courts-martial goes down, the administrative discharge rate goes up."

An official report of the U.S. Court of Military Appeals 2/ made a similar observation in 1960, noting that:

"The unusual increase in the use of the administrative discharge since the code became a fixture has led to the suspicion that the services were resorting to that means of circumventing the requirements of the code. The validity of the suspicion was confirmed by Major General Reginald C. Harmon, then Judge Advocate General of the Air Force, [who] declared that the tremendous increase in undesirable discharges by administrative proceedings was the result of efforts of military commanders to void the requirements of the Uniform Code."

During the early 1960s, when the administrative discharge system was being prominently criticized, the Chief Judge of the U.S. Court of Military Appeals stated that he was aware of occasions when this system was being used by the services to circumvent the judicial safeguards of the code.

In its report on hearings in 1962, the Subcommittee on Constitutional Rights, Senate Committee on the Judiciary,

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1/H.R. Rep. No. 388, 86th Cong., 1st sess. 15 (1959).

2/U.S. Court of Military Appeals Annual Report (1960).

obvious that, as this number is reduced, effective Army strength can be proportionately increased."

\* \* \* \* \*

"\* \* \* If these numbers could be reduced by employing alternative administrative actions where appropriate, there would be fewer people tied up in the trials and the processing of trials, fewer persons in confinement, and more rapid return of the individual to useful duty or else his early departure from the service so that a more effective soldier can promptly take his place. \* \* \*" (Underscoring supplied.)

The 1978 Joint-Service Study Group report also described the need to use the administrative discharge system when possible to alleviate the workload of military courts.

"\* \* \* While a substantial number of commanders would prefer to court-martial and punish all who run afoul of the Uniform Code of Military Justice, limits on resources preclude such action. Should the mechanisms available to the commander under the administrative discharge system no longer be at the commander's disposal, an already overburdened military justice system would be strained to the breaking point. Not only is the military justice system expensive, it is also substantially more time-consuming than administrative separation procedures."

Increased use of discharges under other than honorable conditions relative to punitive discharges

The increased number of discharges under other than honorable conditions issued in recent years coincides with the point when the services started using the discharge in lieu of court-martial, as shown in the chart on the following page.

stated the many advantages to the Government of administratively disposing of offenses. This letter indicates that the use of the administrative process should be encouraged whenever appropriate. It states:

"\* \* \* I am transmitting this letter to enlist your personal aid and attention in insuring that court-martial action is resorted to only in those cases where fully warranted and where alternative administrative measures are clearly not suitable.

"\* \* \* This leads me to suggest that, in considering the appropriate course of action in dealing with such individuals, commanders take into account that court-martial processes must inevitably consume a considerable amount of manpower, time, and effort, often requiring that the individual be retained on duty in a pay status until protracted statutory appellate processes are completed."

\* \* \* \* \*

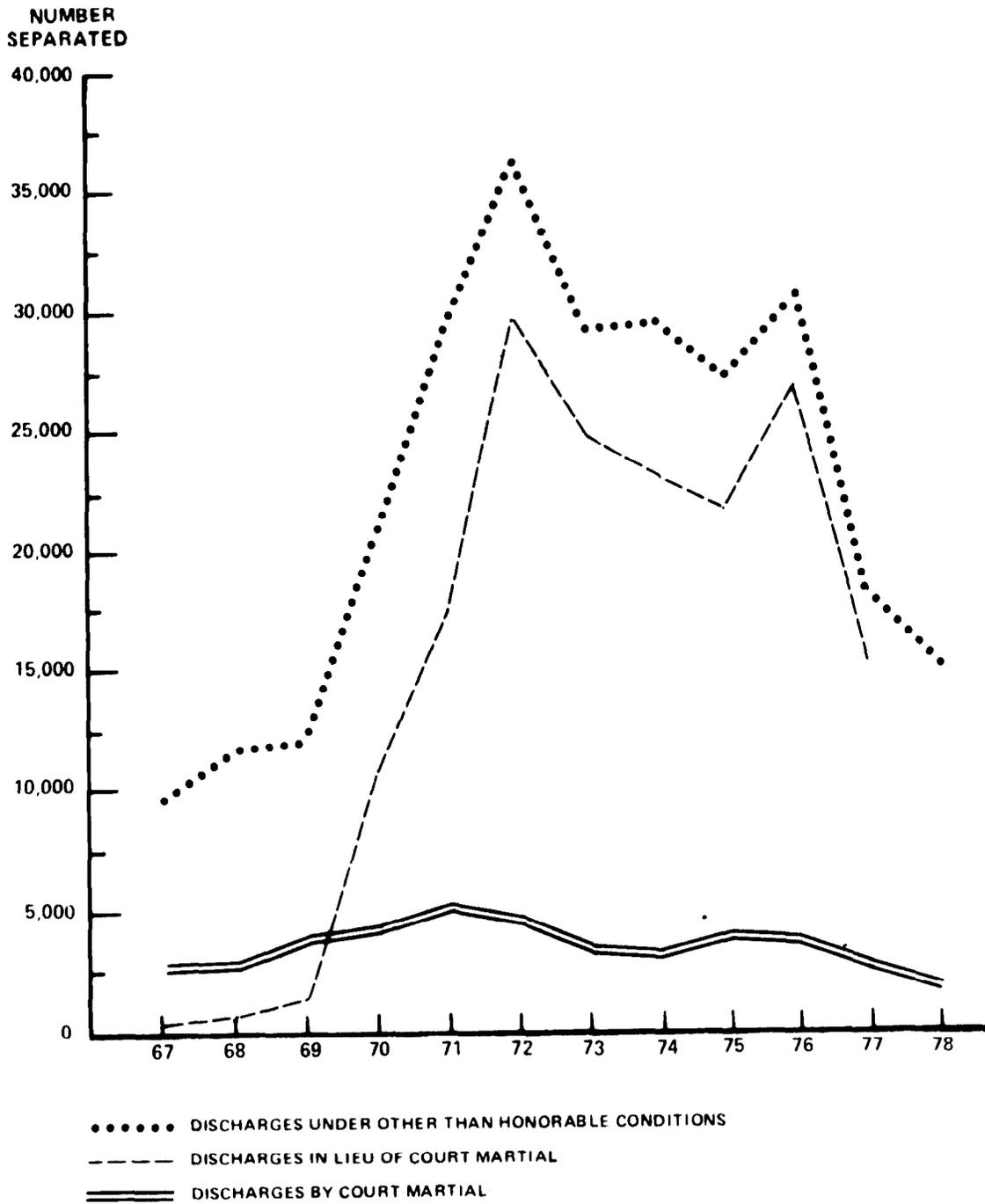
"I can assure you that every effort is being made to reduce processing time in the court-martial process. However, the requirements of the Uniform Code of Military Justice cannot be short circuited, and \* \* \* a fairly long period elapses from the initial date of charges or apprehension until the final step in the appellate process is completed. As an illustration, it takes an average of slightly more than one year for 'not guilty' plea cases and over nine months for 'guilty' plea cases to process from the beginning through decision by the Court of Military Review. If action by the Court of Military Appeals follows, another three to five months will be necessary. All during this period, the individual is carried on the rolls and charged against the Army strength. Unless he is in confinement or on excess leave, the individual will be carried as a duty soldier, probably drawing full pay and allowances after any forfeiture, fine, or confinement portion of the sentence has been served. There are currently about 1,400 general or BCD [bad conduct discharges] special court-martial cases in some stage of appellate processing. It is

As shown on the previous page, in 1967 discharges under other than honorable conditions were imposed at a rate of about three and one-half times the number of punitive discharges imposed by military courts. Since 1967 the rate at which discharges under other than honorable discharges were imposed ran as high as nine times the number of discharges imposed by military courts.

People separated for misconduct are entitled to administrative discharge board hearings, which requires that commanding officers initiating the discharge action take the time and effort to build cases which support separation for this reason. When members are separated for misconduct, the risk of receiving a discharge under other than honorable conditions is far less than if they are separated in lieu of court-martial. In fiscal year 1977, 20 percent of the individuals separated for misconduct received discharges under other than honorable conditions contrasted to 96 percent of those separated in lieu of court-martial. The increased use of the more expeditious discharge in lieu of court-martial has allowed the services to separate far more people with discharges under other than honorable conditions than was possible in the past.

The following chart shows the increasing percent of less than honorable discharges imposed under the administrative process over the last quarter of a century in contrast to the judicial process.

COMPARISON OF THE NUMBER OF DISCHARGES UNDER OTHER THAN HONORABLE CONDITIONS, IN LIEU OF COURT-MARTIAL, AND BY COURT-MARTIAL



Administrative discharge in lieu of court-martial is the principal means for dealing with criminal offenses outside the code

Service regulations call for an individual requesting a discharge in lieu of court-martial to receive a discharge under other than honorable conditions unless a less severe discharge can be justified. A discharge under other than honorable conditions can also be imposed for reason of misconduct. To be separated for misconduct, the administrative discharge board must determine that the member is unqualified for further military service on the basis of patterns of conduct and certain acts or conditions. Acts or conditions which would warrant a discharge for reason of misconduct include convictions in both civilian and military courts. In contrast, the discharge in lieu of court-martial is intended for use in a manner indicated by its designation-- to dispose of specific criminal charges outside court-martial.

The use of the discharge in lieu of court-martial in large numbers is a fairly recent occurrence, increasing from slightly over 400 in 1967 to a high of about 30,000 in 1972. By 1977 this number had declined to 15,300, with 96 percent of these people receiving discharges under other than honorable conditions. In this same year discharges in lieu of court-martial accounted for 82 percent of all discharges under other than honorable conditions. In our AWOL report and another report, 1/ we recommended that the Secretary of Defense stop using this reason for separation because it allows for the administrative handling of criminal wrongdoing outside military courts and contributes to disparities in administering military justice, and its use is contrary to congressional intent.

An administrative discharge in lieu of court-martial is authorized for an individual accused of crime when

- punishment authorized for the offense under the code includes a bad conduct or dishonorable discharge and
- the accused requests an administrative discharge in lieu of court-martial.

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1/See footnote on p. 50.

### PERCENTAGE OF LESS THAN FULLY HONORABLE DISCHARGES IMPOSED BY COURT-MARTIAL AS COMPARED TO THE ADMINISTRATIVE PROCESS



DOD WANTS TO CONTINUE THE THREE-TIERED  
ADMINISTRATIVE DISCHARGE SYSTEM

During the 1975 hearings DOD representatives stated that the services had from time to time reviewed and reaffirmed the need for the administrative discharge system in basically its present form to reward good and faithful service and to encourage meritorious performance. DOD felt that the three-tiered system (honorable, general, and under other than honorable conditions discharges) allowed for distinctions between persons who had performed their service meritoriously and the relatively few whose service, though satisfactory, had not warranted the special thanks of a grateful Nation. DOD further stated that the honorable discharge was prized by the good soldier as an appropriate expression of a job well done and was of great value to the Nation as a whole.

DOD testified that while it did not intend to stigmatize individuals who received other than honorable administrative discharges, it realized that this happened and the consequences were potentially severe. DOD said that unfortunately, there was no way to acknowledge meritorious service without conversely acknowledging less than meritorious service if only by omission of honorable recognition. Consequently, departmental directives provide for certain basic rights designed to insure fairness in administrative discharge proceedings. DOD's fundamental concern was to provide a separation system which permitted the expeditious discharge of persons not suited for continued service but also to adequately protect the rights of the individuals involved. DOD recognized this to be a difficult balancing process. This system commingles objective standards of performance and personal conduct with a subjective evaluation process.

Concern over the plight of those receiving less than honorable discharges is not always evident from statements of other DOD representatives. In a 1972 memorandum to the Secretary of Defense, the Assistant Secretary of Defense (Manpower and Reserve Affairs) stated:

" \* \* \* I cannot agree with the seeming undertone of the suggestion that 'we' are stigmatizing people. Those who are stigmatized by the circumstances of their discharges stigmatize themselves. We simply make the fact a matter of record \* \* \*."

In return for assurance that he will not receive a Federal conviction, confinement, or a punitive discharge, the accused waives his right to trial and appellate review or a hearing by an administrative discharge board. No judge or other neutral party rules on the providence of the discharge request or determines that the accused fully understands the consequences of the actions he is about to take. Before a discharge can be imposed by a military court, charges must be filed and legally admissible evidence developed to judicially establish the person guilty beyond a reasonable doubt.

In most cases a discharge in lieu of court-martial is not a bargain for the accused in the long run. Our test of cases triable by court-martial showed that military courts were far more hesitant to impose a sentence which included a punitive discharge than were discharge authorities to approve discharges in lieu of court-martial.

Many cases when discharges in lieu of court-martial are approved may not have gone to trial or would have been tried in courts which were not authorized to impose punitive discharges. This occurs because service regulations do not require that (1) convening authorities decide whether the cases will be referred to courts authorized to impose punitive discharges before discharges can be requested and (2) a strong case be developed against the accused persons before discharges in lieu of court-martial may be approved.

Most offenses leading to discharges in lieu of court-martial are peculiar to the military, such as AWOL. Since most of those discharged for this reason are young, age 20 and below, we question whether they understand its potential long-term consequences.

The reaction of DOD and service judge advocate general representatives was mixed regarding our proposal to discontinue the administrative separation of individuals to avoid trial by court-martial. Some supported its discontinuance because it compromises the process by which the Congress intended criminal offenses should be dealt with. Others voiced concern that its elimination would increase the workload of military courts.

The 1978 Joint-Service Study Group has proposed that court-martial charges be filed against a member before he can request a discharge in lieu of court-martial. This change is being considered by DOD, along with others proposed by the group.

adapting to military life from finding employment upon returning to civilian life. The great majority of people receiving such discharges are young--age 20 or below--and the bases for the separation decisions are most often offenses unique to the military. Those most frequently given less than honorable discharges are the less educated and minorities, who are already at a competitive disadvantage in the labor market. Society as a whole must pay the price for these character judgments to the extent that they hinder people from being productive and self-sufficient.

The administrative discharge system is being used as a substitute for actions under the code. Some military authorities have urged commanders to use it in this fashion because they contend it is expedient and less costly than the judicial process. A practice which has developed since 1967 is the use of the discharge in lieu of court-martial, which accounts for the great majority of the discharges under other than honorable conditions imposed today. The discharge in lieu of court-martial is being used as an expedient way to get rid of problem people. In our opinion, the administrative discharge system should be used only to discharge individuals who clearly demonstrate they are unqualified for retention, not to dispose of alleged criminal offenses. The issue of whether individuals are guilty of any criminal activity is never resolved when this reason for separation is used, and it provides neither the individual nor society with the safeguards intended under the code.

DOD has voiced its sensitivity over the plight of those with less than honorable discharges, but its empathy is clearly with those whom they judge to have served honorably. One high level DOD representative stated that these people have "stigmatized" themselves and that the military only makes it a matter of record. While DOD recognizes that civilian society uses discharge characterizations in ways not intended, DOD wants to retain the three-tiered system in basically its present form, to reward those whose service it considers honorable.

We believe the integrity of the honorable discharge must be restored and disparities within and among the services eliminated. Eliminating characterization of military service for an initial period after enlistment has considerable merit. The honorable discharge would be reserved for those individuals serving beyond this period without stigmatizing those members unsuited for service through no fault of their own. The Congress is considering legislation limiting Federal benefits to service members who complete their first obligated tour, thereby eliminating the administrative need to characterize service for benefit eligibility.

In a 1974 memorandum to the military departments, the Secretary of Defense acknowledged that subjective character judgments made by the services " \* \* \* can be a cause of undesirable discrimination against the individual by private employers or other persons in civilian life." He further stated that this was not DOD's intent or desire regardless of the circumstances relating to an individual's separation from active duty.

The 1978 Joint-Service Study Group also affirmed the need for the three-tiered discharge system despite recognizing the problem of acknowledging meritorious service without conversely acknowledging less than meritorious service. The study group felt that former service members have a right to a record attesting to the quality of service which they can use as they desire "to meet requirements imposed by civilian society." In its comments on a preliminary draft of this report, DOD reaffirmed the study group's conclusion and stated:

"The Department of Defense is sensitive to the fact that individuals issued administrative discharges under other than fully honorable conditions may encounter difficulty in civilian life because of the stigmatizing effect associated with such discharges. Our fundamental concern is to provide a separation system which will recognize the contributions of individuals who serve commendably, and which also permits the expeditious separation of those not suited to continued service while providing them adequate protection of their basic rights. It is, of course, a difficult balancing process, and while our current system may require certain refinements to improve procedures, the current three-tiered administrative discharge system provides the required balance."

#### CONCLUSIONS

A poor job record can be overcome in time, but a less than fully honorable discharge may remain with the individual throughout his life and deny him many opportunities. A permanent label imposed under a subjective administrative process resulting in disparate treatment of similar cases is not fair to the individual.

The 1972 DOD task force report stated that less than honorable discharges served as a punitive sanction for the individual with little benefit to the services. Such discharges hinder the individual who has had difficulty

disparities and stigmatizing effects on postservice lives will be reduced, even without further changes, because fewer general and under other than honorable conditions discharges will be imposed. This should help restore integrity to the honorable discharge and allow it to be reserved for truly superior performance.

MATTER FOR CONSIDERATION BY THE CONGRESS

DOD believes that the three-tiered administrative discharge system, while needing improvement, should remain basically as it is. The House and Senate Committees on Appropriations have expressed concern about the disparities in the types of discharges awarded and recommended standardizing the basis for the honorable discharge across the services. We agree with the need for standardization but believe that not characterizing the military service of members separated during an initial period after enlistment would have considerable merit.

Because so much is at stake for the individuals involved, we believe the Congress should hold hearings to obtain the views of interested parties and decide the future of the services' characterization and separation systems.

As discussed in chapter 3, the House and Senate Committees on Appropriations recently expressed their concern that DOD's characterization system is not properly recognizing honorable service. These Committees made several recommendations to DOD, including taking immediate action to standardize the basis for the honorable discharge across the services. Enacting these recommendations will help insure that honorable discharges are awarded to individuals who performed at such a level but will result in greater percentages of less than fully honorable discharges. However, the subjective decisions that must be made to characterize service and the differences in service separation philosophies and practices will make achieving the standardization desired by the Committees difficult. Regardless of how definitive and restrictive the policy guidance is, differing attitudes will continue among the services and commanders within a service.

The proposals of the study group would reduce the probability that service members will receive less than fully honorable discharges in the future by awarding more honorable discharges. But by adopting the study group's changes, DOD would relinquish any notion that the honorable discharge can be relied on to attest to the quality of the member's service. If persons discharged for adverse reasons continue to receive honorable discharges, the honorable discharge certificate cannot serve as a "testimonial of honest and faithful service." The proposals of the study group would further erode the integrity of the honorable discharge and detract from the notion that the honorable discharge is a reward for honest and faithful service. This appears contrary to the intent of the House and Senate Committees on Appropriations.

Not characterizing an initial period of service will allow DOD to enact the recommendations of the House and Senate Committees on Appropriations and minimize the number of persons discharged with general and under other than honorable conditions discharges. The large majority of service members who are not suited for continued military service could be identified and separated without characterization. While these individuals would have to overcome the negative consequences of not completing the initial period, they will not have the lifelong stigma associated with less than fully honorable discharges imposed under the present system.

Most of the disparities in imposing discharges that concern the Committees occur in separating members and characterizing their service during the first enlistment. If service is not characterized for an initial period,

Nevertheless, broad discretion remains in making upgrading decisions, and interservice variations continue in the rates of discharges upgraded.

Both the discharge review and correction boards report backlogs of cases. Pending lawsuits could increase these backlogs many times over.

#### ROLE OF DISCHARGE REVIEW BOARDS

Before 1944 the only way for a person to have his discharge changed was to appeal to the Congress. This placed a burden on the Congress to consider a number of private bills--one for each appeal received. Therefore, the Congress in 1944 passed the Servicemen's Readjustment Act (10 U.S.C. 1553) establishing discharge review boards to relieve itself of the burden of considering private bills each session requesting changes in discharges.

The Air Force, Army, and Navy each have discharge review boards. The Navy Board also serves the Marine Corps. These boards can review any discharge not resulting from a sentence by general court-martial. If a board decides a change is warranted, it may, subject to review by the responsible service Secretary, direct that a new discharge be issued.

#### LONGSTANDING DISPARITIES IN REVIEW STANDARDS

Until March 1978 discharge review boards operated independently of each other and developed different philosophies and systems of their own. One important difference among the services was the use of preservice and postservice factors in evaluating the appropriateness of discharges imposed and the specific criteria to be used in the evaluations. The Air Force and Army Boards considered both preservice and postservice factors, while the Navy Board would not normally consider conditions and conduct before and after the period of service.

Legislation enacted in October 1977 <sup>1/</sup> for the first time required publication of uniform discharge review standards and procedures applicable to all members administratively separated. This legislation further required that these standards be historically consistent with criteria for determining honorable service and not include any criterion for automatically granting or denying an upgrade. This resulted in the issuance of DOD Directive 1332.28 on

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<sup>1/</sup>Act of Oct. 8, 1977, Public Law 95-126.

March 29, 1978, setting forth discharge review board standards and procedures. It states:

"The objective of a discharge review is to examine the propriety and equity of the applicant's discharge and to effect changes, if necessary. The standards of review and the underlying factors which aid in determining whether the standards are met shall be historically consistent with criteria for determining honorable service. No factors shall be established which require automatic change or denial of a change in a discharge. Neither a DRB [discharge review board] nor the Secretary of the Military Department concerned shall be bound by any methodology of weighting of the factors in reaching a determination. In each case, the DRB or the Secretary of the Military Department concerned shall give full, fair, and impartial consideration to all applicable factors prior to reaching a decision." (Underscoring supplied.)

Equity considerations include an evaluation of matters such as age, educational level, and aptitude scores; whether the individual met normal military standards of acceptability for military service; and similar indicators of an individual's ability to serve satisfactorily and adjust to military service.

RATES AND DEGREES OF UPGRADING  
VARY AMONG THE SERVICES

In fiscal year 1978 the combined rate of upgrading by the discharge review boards was 41 percent. However, there was a large variation in the upgrade rates between the Navy Board and the other two services.

<u>Service</u>	<u>Reviews completed</u>	<u>Upgrades</u>	<u>Percent</u>
Army	4,391	2,220	51
Navy	5,033	1,556	31
Air Force	<u>902</u>	<u>482</u>	53
Total	<u>10,326</u>	<u>4,258</u>	41

The tables on the following page illustrate upgrade rates both before and after publication of the uniform standards and procedures. We found the rates of upgrading for the Army and the Air Force remained about 50 percent. The Navy

Boards' upgrade rate increased from 17 percent to 40 percent but is still below the rates of the other services.

Prior to Uniform Standards

<u>Service</u>	<u>Reviews completed</u>	<u>Upgrades</u>	<u>Percent</u>
Army	1,006	502	50
Navy	1,918	325	17
Air Force	<u>290</u>	<u>140</u>	48
Total	<u>3,214</u>	<u>967</u>	30

After Uniform Standards

<u>Service</u>	<u>Reviews completed</u>	<u>Upgrades</u>	<u>Percent</u>
Army	3,385	1,718	51
Navy	3,115	1,231	40
Air Force	<u>612</u>	<u>342</u>	56
Total	<u>7,112</u>	<u>3,291</u>	46

As shown in the following table 1/, the Air Force Board was far more likely to upgrade a discharge under other than honorable conditions to honorable than were any of the other boards. It did this in 65 percent of the cases-- a rate six times that of the Navy Board and three times that of the Army Board. The Air Force Board upgraded almost half the bad conduct discharges all the way to honorable, a rate more than five times as great as that of the Army Board. The Navy Board did not upgrade any bad conduct discharges to honorable.

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1/Covering fiscal year 1978 cases but only 11 months for the Army.

<u>Discharge upgraded/ service</u>	<u>Total upgraded</u>	<u>Upgraded to general</u>	<u>Percent upgraded to general</u>	<u>Upgraded to honorable</u>	<u>Percent upgraded to honorable</u>
Under other than honorable conditions:					
Air Force	507	175	35	332	65
Army	1,296	1,036	80	260	20
Navy	<u>331</u>	<u>293</u>	89	<u>38</u>	11
Total	<u>2,134</u>	<u>1,504</u>	70	<u>630</u>	30
Bad conduct:					
Air Force	41	22	54	19	46
Army	25	23	92	2	8
Navy	<u>9</u>	<u>9</u>	100	-	-
Total	<u>75</u>	<u>54</u>	72	<u>21</u>	28

Analysis of the discharges upgraded in fiscal year 1978 which had not been previously reviewed shows that the individual had a 52-percent chance of receiving an upgrade in his discharge when appearing in person before the board. In the Air Force, the probability was 79 percent. In contrast, an applicant who did not appear in person had only a one in three chance of getting a discharge upgraded. Board officials attribute the higher upgrading rate of those appearing in person to the added opportunity applicants have to present facts which may not be apparent from reviewing only the documentary evidence and their availability to respond to questions raised by board members.

#### OTHER INCONSISTENCIES AND PROBLEMS

One important interservice difference noted is the occasional use by the Air Force and the Navy of inexperienced board members.

Discharge review boards consist of one or more panels; each panel has five members, all of whom are officers. The President of the Army Discharge Review Board told us that, in his opinion, all cases should be reviewed by panel members experienced in discharge review, and this practice is

consistently followed in the Army. When the Air Force and Navy Boards conduct reviews in locations other than Washington, D.C., however, panels consist of only two or three experienced board members. Other members are selected for temporary duty from military installations nearby the locations where the panels are conducting the reviews.

Backlogs of cases pending review are increasing. At the end of fiscal year 1975, the Army and Navy Boards reported 5,714 cases pending review. By the end of fiscal year 1978, this number had increased to 25,203. The backlog is likely to get worse. As the result of recent litigation, 1/ all of the boards must explain the bases for their decisions in writing, which increases the time needed to complete case reviews. In addition, the number of applications for upgrading is increasing following publication of DOD's discharge review standards in March 1978. The Army and Navy Boards have requested additional staff to help reduce the backlogs.

Problems presently being experienced by the boards could get much more serious, depending on the outcome of pending lawsuits. (See app. VII for court cases in litigation.) A January 1979 lawsuit was filed against the services accusing discharge review boards of using arbitrary and unlawful procedures in deciding whether to upgrade discharges. The services were asked to produce the names and addresses of 1.3 million persons who had received less than fully honorable discharges so they could be advised of their rights to review. If the plaintiff is successful, producing the names and addresses will be an extremely large undertaking. It can also result in additional applications for discharge review, which will increase present backlogs many times over.

In November 1979 a U.S. district court ordered the Army to automatically upgrade 10,000 less than fully honorable discharges to honorable because the basis for discharge was an illegal drug user testing program. The effect of the decision on discharge review boards is yet to be determined, but may be considerable if members of the other services who were similarly discharged apply for upgrading.

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1/Urban Law Institute of Antioch College, Inc. et al. v. Secretary of Defense, et al., civ. no. 76-530 (D.D.C. Jan. 31, 1977).

Complete statistics were not available showing the percent of those receiving less than fully honorable discharges who request relief from discharge review boards. However, in the 9 years ended in 1975, about 550,000 people were separated with less than fully honorable discharges while only about 62,000 applications for relief were processed by these boards during the same period. While this does not give a precise rate of those who request relief, it indicates that this rate is low.

APPLICANTS' RIGHT TO FURTHER REVIEW

If a discharge review board decides not to upgrade a discharge, the applicant is notified that he has a right to have his discharge further reviewed by the service's board for correction of military or naval records. There are three such boards; the Navy Board also serves the Marine Corps. These boards were established to correct any error or injustice in an individual's military record, including type of discharge. Guided by DOD and service standards and policies, these boards evaluate each case on its own merits.

Correction boards consider an applicant's postservice record, including problems encountered in finding and maintaining employment; problems with family or social life; involvement with civilian authorities; and evidence of maturity, such as enrollment in educational programs. However, this guidance is not set forth in writing, and the weight, if any, a board member gives to any of these factors is left to his discretion. The services differ considerably in soliciting and treating advisory opinions. These opinions are solicited from service organizations with expertise in the field of discharges--the judge advocate general and offices of personnel. Although these opinions are not binding, some boards give them considerable weight.

We estimate that, of the 16,094 cases reviewed by the correction boards in fiscal year 1978, 2,154 (14 percent) involved discharges. In these latter cases, relief was granted 41 percent of the time; the Air Force Board granted relief more often than the other boards and at more than twice the rate as the Army Board.

<u>Service</u>	<u>Discharge cases</u>	<u>Number in which relief granted</u>	<u>Percent</u>
Air Force	251	198	79
Army	1,485	482	32
Navy	<u>418</u>	<u>197</u>	47
Total	<u>2,154</u>	<u>877</u>	41

Only the Army Board maintains statistics on the types of relief granted. These statistics show that relief came in the form of upgraded discharges in about 86 percent of the cases, the great majority of which were upgrades from punitive discharges or discharges under other than honorable conditions to general discharges.

Correction board officials further told us that they do not keep statistics on the rates of discharges upgraded where relief had first been denied by discharge review boards. A Navy Board member told us, however, that relief was often granted by his board in these cases.

An Air Force official has told us that case reviews normally take 12 or more months. Navy statistics show that case reviews usually take 18 months. Both the Air Force and Navy Boards have requested more people to handle the backlogs. A Navy Board official told us that active duty cases are normally processed more quickly.

#### CONCLUSIONS

The independent development of discharge review board philosophies and systems among the services has led to the differing treatment of people with similar records requesting that their discharges be upgraded. Even with new legislation requiring DOD to publish uniform standards and procedures, broad discretion remains in making upgrade decisions and interservice variations continue in the rates of discharges upgraded.

The legislation enacted prohibits automatically granting or denying an upgrade, requiring that each case be decided on its own merits. The standards provide for the application of factors in deciding whether to upgrade the discharge having little or nothing to do with the individual's proficiency and performance while on active duty. The boards for the correction of military or naval records operate with even broader discretion. The factors they use are not set forth in writing, and they are not bound by DOD or service review standards or procedures.

The vast majority of former service members holding less than fully honorable discharges have not requested discharge reviews. Many may receive upgrades if they apply. Upgrading by both the discharge review boards and boards for correction of military or naval records approaches 50 percent of the cases reviewed. Since relief usually must be denied by the discharge review boards on cases upgraded by the correction boards, the probability of a person getting an upgrade who applies to both boards could be considerably higher.

Both the discharge review and correction boards report backlogs, and most have requested additional staff. The number of applications received by the review boards has increased following publication of the discharge review standards in March 1978. Further, the recent requirement that both types of boards must explain the bases for their decisions in writing has increased the time needed to complete case reviews.

Problems being experienced by both the review and correction boards could get much worse if the services are required to produce the names and addresses of 1.3 million persons who have received less than fully honorable discharges, as requested by a pending lawsuit. This will be an enormous task and would increase the backlogs many times over.

If the new standards for imposing discharges proposed by the 1978 Joint-Service Study Group are adopted, many additional requests for upgrading may be received. Proposed revisions would authorize only honorable discharges for persons separated for marginal performance and unsuitability. Many of those holding general discharges today were separated for these reasons. The study group did not address the implications of adopting its proposals on the workload of either the review or correction boards.

#### RECOMMENDATIONS

To help insure that upgrade decisions are uniform and consistent among the services, we recommend that the Secretary of Defense (1) insure that upgrade criteria for discharge review boards are applied fairly and consistently among the services and (2) establish uniform criteria for the boards for correction of military or naval records.

## CHAPTER 6

### AGENCY COMMENTS AND OUR EVALUATION

At our request, DOD provided formal comments on a preliminary draft of this report. (See app. VIII.) Its overall comments did not agree with the positions and recommendations we made. After considering these comments and other matters affecting the discharge system occurring after the draft report was prepared, we modified the report's recommendations on discontinuing the practice of characterizing service. This and related recommendations have been deleted, but we believe the Congress should fully explore the matter and decide the future of characterizing military service.

The recommendations on administrative discharge boards and establishing time frames for processing discharges for adverse reasons remain essentially the same as presented in the preliminary draft report. DOD did not have the opportunity to comment on the recommendations that the Secretary of Defense monitor the recently implemented discharge review board standards or that the boards for correction of military or naval records be subject to the same review standards.

We also requested formal comments from VA. Although VA's formal comments were received too late for formal evaluation, we did meet with its representatives, and its comments were considered in the final preparation of this report. VA's formal comments are included as appendix IX.

### THE PRACTICE OF CHARACTERIZING THE MILITARY SERVICE OF ALL SERVICE MEMBERS SHOULD BE REEVALUATED

In the preliminary report, we concluded that the disadvantages of characterizing military service outweighed the advantages, and we recommended that the practice be discontinued. DOD stated that it opposed any recommendation that would eliminate service characterization entirely. We can agree with DOD that veterans who serve honorably should not be required to forego this recognition. We had originally envisioned, however, that, in lieu of characterizing their service, these members could be recognized through other means, such as an awards system. However, DOD has persuaded us that career service members probably do seek the honorable discharge as recognition of their honest and faithful service.

By eliminating administrative service characterization for an initial period after enlistment, only those service

members who serve beyond this period would be subject to service characterization, except as a court-martial may direct. Members separated during this period would not have to overcome the additional stigma that is associated with general and under other than honorable conditions discharges. Since many of these individuals are already at a competitive disadvantage in civilian life--because of limited education or are members of a minority group--not contributing further to their problems by labeling them less than honorable should be a major consideration in deciding whether to retain service characterization.

The 1978 DOD Joint-Service Study Group concluded that persons who are discharged for reasons of marginal performance or unsuitability should not be stigmatized with a less than fully honorable discharge. However, the group recommended that these persons be given an honorable discharge. We believe that this proposal, if adopted, would further erode the integrity of the honorable discharge and detract from the notion that the honorable discharge is a reward for honest and faithful service. This and other proposals by the group appear contrary to the intent of the House and Senate Committees on Appropriations.

Not characterizing service for an initial period will allow DOD to enact the congressional Committees' recommendations. This period should be the number of months needed to identify and separate the majority of recruits who prove unsuccessful. Most of the disparities in imposing discharges that concern the Committees occur in separating members and characterizing their service during the first enlistment. Disparities will be reduced, even without other changes, because fewer general and under other than honorable discharges will be imposed. This should help restore integrity to the honorable discharge and allow it to be awarded only for truly superior performance.

DOD was also concerned over how Federal veterans' benefits would be administered without characterizing service. Many Federal veterans' benefits programs are administered by VA and other agencies. Authorizing legislation allows these agencies to link eligibility for benefits to the former service member's type of discharge and reason for separation. Presently those members who serve over 179 days and receive honorable or general discharges, including any upgrades, are eligible for many Federal benefits without further review. Individuals with discharges under other than honorable conditions or bad conduct, generally, must submit to a review of their service record by the agency to determine their benefit eligibility. However, because

of the disparities in imposing discharges, many of these individuals may have better service records than others awarded more favorable discharges.

Without type of discharge or service characterization, the agencies administering Federal veterans' benefits may have to review each claim to determine eligibility. If such reviews were required for all claims, the effect of differences in the services' discharge philosophies and practices would be minimized, but the necessary reviews would be more costly and time consuming to them than their present systems. Overall, however, we believe the costs the services should save in not characterizing service would offset this additional burden, but we have not evaluated this possibility.

Additionally, other methods for determining benefit eligibility are possible. For example, the Congress is considering legislation that would limit Federal veterans' benefits to persons who complete their first obligated tour of duty. If approved, this would eliminate the administrative need to characterize service for benefit eligibility and make length of service the determining criteria.

ADMINISTRATIVE DISCHARGE BOARDS SHOULD BE  
AVAILABLE AS AN OPTION TO ALL MEMBERS  
SEPARATED INVOLUNTARILY FOR ADVERSE REASONS

DOD opposed giving board entitlement to all members being processed for involuntary separation for adverse reasons. DOD believes that such an approach will not serve the interests of the individual or the military services. Further, DOD stated that all members with a substantive investment in a service career are afforded the right to a board hearing. According to DOD, the basic issue is one of protecting the tenure rights of individuals beyond a given point of service or grade, as well as those facing separation for misconduct. DOD also contends that the costs to administer these boards would increase if all involuntary separatees were entitled to a board hearing.

As we pointed out in the report, DOD has issued broad guidance for when an administrative discharge review board should be held. Only the Navy and the Marine Corps strictly follow the guidance. The Army and the Air Force regulations authorize more hearings than the DOD guidance suggests--with the Army giving hearings to all members separated for unsuitability and misconduct without regard to tenure or grade. On the basis of our sample, we estimate that this practice costs the Army about \$8 million a year.

The differences in eligibility for an administrative discharge board hearing limits DOD's ability to insure that all service members involuntarily separated for cause receive a fair and independent evaluation of the merits of the separation. The primary objective of all boards is to determine whether an individual should be retained in the service. As noted by DOD, the service characterization is a secondary requirement which is virtually a concurrent determination, which we strongly believe must be carefully considered in view of the possible consequences of general and under other than honorable conditions discharges.

With or without the requirement to determine service characterization, we believe that service members who are dissatisfied with military life and are being recommended for separation will forego the board hearing in most cases. But without characterization, the only time a hearing would be opted for by the service member would be if the member believes the separation is unfair and wants a review before an independent panel of officers. The possibility of a less than fully honorable service discharge would most probably increase the number of discharge review board hearings. But we believe that any additional costs that may accrue will be offset by the positive benefits if the hearings are favorably viewed by service members as protection against unwarranted separation or undeserved service characterizations.

Considering the potentially severe consequences of general and under other than honorable conditions discharges, all precautions and protections possible ought to be made available to the service member being separated for adverse reasons. The eligibility criteria for boards ought to therefore be made uniform across the services and provided to as many persons as possible who are being separated involuntarily for adverse reasons. In all cases, except punitive discharges, where the reason for discharge will bar eligibility for Federal veterans' benefits, the hearing should be required.

We believe such hearings should not be an obstacle or an impediment to the expeditious separation of service members determined unfit for further service. We believe administrative discharge boards should protect the individual's rights and provide the member an opportunity to have a fair and independent hearing before separation for adverse reasons.

DOD SHOULD ESTABLISH TIME FRAMES FOR  
THE SERVICES TO MEET IN PROCESSING  
PEOPLE FOR SEPARATION

DOD concurs in the intention of this recommendation and will study the feasibility of placing reasonable time guidelines on processing separation cases. DOD adds that each separation case is unique and must be personalized to the individual being separated, depending on such things as counseling and eligibility for administrative discharge boards. Commanders must continue to have flexibility to insure due process, and, therefore, it may be impracticable to establish identical interservice time guidelines.

We agree with DOD's observations. Interservice differences in the services' separation practices for logistical purposes are unavoidable and must be considered. However, as previously recommended the eligibility for administrative discharge board hearings should be the same. If the House and Senate Committees on Appropriations' recommendations are enacted, other practices may have to be made uniform among the services to insure standardization of the basis for the honorable discharge. Any differences that still exist during the services' separation processing time frames should be justified to and approved by the Secretary of Defense. Once approved, the guidelines should be periodically reevaluated to insure compliance and to correct any problems. The time frames for processing should be used as guides and not as hard and fast rules. We do not envision that each separation case should be the same, only that it be given the priority and attention needed to make the process as efficient as possible.

LOCATIONS VISITED

## OFFICE OF THE SECRETARY OF DEFENSE:

Office of Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics), Washington, D.C.  
United States Court of Military Appeals, Washington, D.C.

## AIR FORCE:

Headquarters, Washington, D.C.  
Air Force Court of Military Review  
Air Force Discharge Review Board  
Air Force Board for Correction of Military Records  
Air Force Military Personnel Center, San Antonio, Texas  
Whiteman Air Force Base, Missouri

## ARMY:

Headquarters, Washington, D.C.  
Army Court of Military Review  
Army Discharge Review Board  
Army Board for Correction of Military Records  
1st Infantry Division, Fort Riley, Kansas

## MARINE CORPS:

Headquarters, Washington, D.C.

## NAVY:

Headquarters, Washington, D.C.  
Navy Court of Military Review  
Navy Discharge Review Board  
Naval Board for Correction of Naval Records

SIGNIFICANT EVENTS IN DEVELOPING THE  
ADMINISTRATIVE DISCHARGE SYSTEM

- Revolutionary War Discharge certificates were issued.
- 1841 Discharge certificates contained the phrase "honest and faithful" service. The phrase was left in or lined through as the discharge authority deemed appropriate.
- 1893 Army regulations formally recognized "discharge without honor," which had been in use since the Civil War.
- 1916 The Army began using a two-tiered system consisting of an honorable and a "blue discharge." The blue discharge contained no service characterization.
- 1926 The Navy began using a three-tiered system consisting of an honorable, a general, and an undesirable discharge.
- 1946 Hearings before the House Committee on Military Affairs considered the process for imposing the blue discharge and the stigma on its holder.
- 1947 The services eliminated the blue discharge and initiated the three-tiered system consisting of honorable, general, and undesirable discharges.
- 1948 Passage of the Selective Service Act authorized the Secretary of Defense to establish standards and procedures governing discharges, and DOD issued formal instructions specifying reasons for discharge and service characterizations.
- 1953 DOD formed an ad hoc committee to evaluate the administration of the discharge system.
- Hearings before the Special Subcommittee on Military Discharges, House Armed Services Committee, focused on the inconsistencies and

lack of uniformity among the services in issuing discharges, as well as the lasting stigma associated with derogatory characterization of service.

Recognizing that the DOD ad hoc committee was reviewing discharge procedures, the House Committee recommended only that procedures established be uniform.

- 1959 DOD issued its first directive governing administrative discharges. Most significantly the directive granted an individual the option of a hearing before a board of officers when the reason for separation authorized an undesirable discharge.
- 1962 Hearings before the Subcommittee on Constitutional Rights, Senate Committee on the Judiciary, centered on the administrative proceedings and differences among the services in imposing undesirable discharges and pointed out that few people understood the difference between dishonorable discharges resulting from trial by general courts-martial and administratively imposed undesirable discharges.
- 1965 DOD, responding to congressional concern, issued a revised directive increasing procedural guidelines and service members' rights. The directive increased entitlement to board hearings, established that people had the right to have lawyers at the hearings, and required that commanders attempt to rehabilitate certain persons before discharge processing.
- 1966 Hearings were convened to again review procedural guidelines and service members' rights.
- 1969 Hearings before the Subcommittee on Treatment of Deserters from Military Service, Senate Committee on Armed Services, resulted in a recommendation that DOD discontinue the use of the "discharge in absentia." DOD subsequently limited use of the discharge in absentia.

- 1971                   Hearings before the Subcommittee No. 3, House Committee on Armed Forces, were held to determine if a law was needed governing the issuance of undesirable discharges because of the stigma associated with them.
- DOD directed that people subject to discharge for personal use or possession of drugs be given either honorable or general discharges.
- 1973                   DOD revised its directive to provide that members being discharged with general discharges had the right to consult with lawyers and clarified the reasons for administrative discharges relating to drug and alcohol use.
- 1974                   DOD eliminated use of separation program numbers or separation program designators on the discharge certificate (DD Form 214) so that those reviewing it could not discover the specific reasons for discharge.
- 1975                   Hearings before the Subcommittee on Military Personnel, House Committee on Armed Services, again considered procedural aspects of the administrative discharge system. Of primary concern was the lack of uniformity among the services in imposing undesirable discharges.
- 1976                   DOD revised its directive significantly. It deleted the unfitness category of reasons for separation, required that members being separated with general discharges have the right to consult counsel even though no board hearings were involved, precluded adding together misdemeanor offenses to authorize approval of request for discharge in lieu of court-martial, directed that discharge authorities could not separate individuals if administrative boards recommended retention, and discontinued the undesirable discharge, replacing it with the discharge under other than honorable conditions.
- 1977                   DOD established a joint-service administrative discharge study group to look at the entire administrative system in light of a number of legislative proposals, GAO reports, recent court actions, the Ford Clemency Program, and the Special Discharge Review Program.

1978

The Joint-Service Study Group recommended numerous changes to the DOD directive. These recommendations provide for uncharacterized service, require that honorable discharges be given to those separated for marginal performance and unsuitability, and prohibit giving honorable discharges to individuals separated for misconduct or in lieu of court-martial.

1979

The House and Senate Committees on Appropriations expressed concern with the differences among the services in the application of DOD guidelines controlling discharges. These Committees recommended that the Secretary of Defense standardize the basis for the honorable discharge across the services and insure that any individual receiving an honorable discharge has in fact performed at such a level.

PRINCIPAL LAWS AUTHORIZING DESIGN OF AN  
ADMINISTRATIVE DISCHARGE SYSTEM

The principal laws authorizing the Secretaries of Defense, Transportation (for the Coast Guard), the Army, the Navy, and the Air Force to design an administrative discharge system are outlined below.

5 U.S.C. 301

"The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property."

50 U.S.C. 454(b)

"Each person inducted into the Armed Forces under the provisions of subsection (a) of this section shall [be] \* \* \* discharged in accordance with procedures prescribed by the Secretary of Defense (or the Secretary of Transportation with respect to the United States Coast Guard) or as otherwise prescribed by \* \* \*."

10 U.S.C. 1163(c)

"A member of a reserve component who is separated therefrom for cause, except under subsection (b), is entitled to a discharge under honorable conditions unless--

"(1) he is discharged under conditions other than honorable under an approved sentence of a court-martial or under the approved findings of a board of officers convened by an authority designated by the Secretary concerned; or

"(2) he consents to a discharge under conditions other than honorable with a waiver of proceedings of a court-martial or a board." (Underscoring supplied.)

10 U.S.C. 1168(a)

"A member of an armed force may not be discharged or released from active duty until his discharge certificate or certificate of release from active duty \* \* \* are ready for delivery to him or his next of kin or legal representative."

10 U.S.C. 1169

"No regular enlisted member of an armed force may be discharged before his term of service expires, except--

"(1) as prescribed by the Secretary concerned;

"(2) by sentence of a general or special court-martial; or

"(3) as otherwise provided by law."

10 U.S.C. 874(b)

"The Secretary concerned may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial."

38 U.S.C. 101(2)

"The term 'veteran' means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable."  
(Underscoring supplied.)

BENEFITS FOR WHICH ELIGIBILITY 1/ IS DEPENDENT  
ON SERVICE CHARACTERIZATION

Benefits administered by the services:

1. Payment for accrued leave (60-day career maximum)
2. Death gratuity (6 months' pay)
3. Transportation to home
4. Transportation of dependents and household goods to home
5. Admission to Soldier's Home
6. Burial in National Cemetery
7. Headstone Marker

Recipients of honorable or general discharges are eligible for all of the foregoing benefits. Individuals holding discharges under other than honorable conditions (formerly undesirable) retain eligibility for benefits numbered 2 and 3 above. They lose eligibility for the remainder.

Benefits administered by the Veterans Administration:

1. Dependency and indemnity compensation
2. Compensation for service-connected disability or death
3. Pension for non-service-connected disability or death
4. Medal of honor roll pension
5. Insurance
6. Vocational rehabilitation (disabled veteran)
7. Educational assistance
8. War orphans' educational assistance
9. Home and other loans
10. Hospitalization and domiciliary care
11. Medical and dental services
12. Prosthetic appliances (disabled veteran)
13. Guide dogs and equipment for blindness (disabled veteran)
14. Special housing (disabled veteran)
15. Automobiles (disabled veteran)
16. Funeral and burial expenses
17. Burial flag

Recipients of honorable or general discharges are eligible for all of the foregoing benefits. Except under certain prescribed circumstances, individuals holding discharges

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1/Contingent on the individual's serving over 179 days.

under other than honorable conditions may receive benefits if the Veterans Administration concludes that the discharge was under conditions other than dishonorable.

Benefits administered by other Federal agencies:

1. Preference for farm loans (Department of Agriculture)
2. Preference for farm and other rural housing loans (Department of Agriculture)
3. Civil service preference (Office of Personnel Management)
4. Civil service retirement credit (Office of Personnel Management)
5. Reemployment rights (Department of Labor)
6. Job counseling and employment placement (Department of Labor)
7. Unemployment compensation for ex-servicemen (Department of Labor)
8. Naturalization benefits (Department of Justice, Immigration and Naturalization Service)
9. Old Age and Disability Insurance (Social Security Administration)

Recipients of honorable or general discharges are eligible for all of the foregoing benefits. Individuals holding discharges under other than honorable conditions retain eligibility for benefits numbered 1 and 2 above. They lose eligibility for those numbered 3, 4, 5, and 8. They may receive benefits under 6 and 7, if the Secretary of Labor determines that the discharges were issued under conditions other than dishonorable.

ESTIMATED PERSONNEL COSTS OF IMPOSING  
AND REVIEWING DISCHARGES FOR ADVERSE REASONS

DOD and the services do not accumulate data needed to compute the cost of imposing and reviewing discharge characterizations. Our estimate of the annual personnel costs attributable to characterizing service for persons discharged for adverse reasons follows:

	<u>Cost</u> (millions)
Imposing discharges (note a)	\$14.2
Reviewing discharges for upgrading	6.3
Service members awaiting separation (note b)	<u>35.1</u>
Total	<u>\$55.6</u>

a/Includes discharges for unsuitability, misconduct, and in lieu of court-martial.

b/Includes the additional costs of discharges for reason of misconduct in all the services and unsuitability in the Army over the most expeditious adverse reason for discharge--marginal performance.

Our estimate does not include several cost elements which could not be readily developed, such as the

- expense of the court-martial which resulted in a punitive discharge and the accompanying review by the U.S. Court of Military Appeals;
- facilities, equipment, supplies, and training relating to the separation action;
- pay to commanders and administrative personnel associated with imposing discharges for marginal performance or by court-martial;
- pay to individuals awaiting final disposition of discharges for marginal performance or review of punitive discharges and for unsuitability in the Air Force, Marine Corps, and Navy;

- recruiting and training costs lost due to the early separation;
- processing out costs; and
- costs of veterans' benefits granted to individuals after discharge.

Other costs which could not be priced out include the disruptiveness to unit morale and effectiveness when ineffective and nonproductive soldiers are kept on active duty awaiting finalization of the separation and the loss to combat capability when commanders are diverted from giving full attention to providing leadership and supervision.

Our estimate is based on information developed during our review at DOD, courts of military review, discharge review boards, boards for correction of military or naval records, and two Army field locations--Ft. Sill, Oklahoma, and Ft. Riley, Kansas. It is based on the premise that unit costs and the number of days involved in discharges for adverse reasons at the Army locations selected are reasonably representative of such costs in all the services.

#### IMPOSING DISCHARGES FOR ADVERSE REASONS

We estimate the services spent \$14.2 million in pay and allowances to commanders and others for imposing discharges for unsuitability, misconduct, and in lieu of court-martial. These personnel costs are shown in the following schedule.

<u>Reason for discharge</u>	<u>Number imposed in FY 1977</u>	<u>Unit cost</u>	<u>Costs</u> (millions)
With board hearing:			
Unsuitability (Army only)	1,732	\$360	\$ 0.6
Misconduct	6,162	360	2.2
Without board hearing:			
Unsuitability	31,054	208	6.5
Misconduct	10,956	208	2.3
In lieu of court-martial	<u>15,297</u>	171	<u>2.6</u>
<b>Total</b>	<b><u>65,201</u></b>		<b><u>\$14.2</u></b>

As shown on the previous page, the cost of imposing discharges in lieu of court-martial was \$171, whereas the cost of imposing discharges for misconduct or unsuitability was \$360 with a board hearing and \$208 when the service member waived this right. The Army is the only service which provides the option of a board hearing to all members separated for unsuitability. Therefore, we assumed that only the Army incurred costs for board hearings in unsuitability cases.

These costs were derived from the grades and average time that each person spent on imposing each type of discharge which we obtained at Ft. Sill. In constructing our estimate of personnel costs, we used DOD's "Average Cost of Military and Civilian Manpower in the Department of Defense," dated December 1977.

#### REVIEWING DISCHARGE CHARACTERIZATIONS

We estimate the services spent at least \$6.3 million in fiscal year 1977 to review discharge characterizations for possible upgrading. The personnel costs for the discharge review boards, boards for correction of military or naval records, and the courts of military review are summarized below.

<u>Level of review</u>	<u>Costs</u> (millions)
Discharge review boards	\$2.5
Boards or correction of military or naval records	.3
Courts of military review	<u>3.5</u>
Total	<u>\$6.3</u>

Our estimate is based on the number of people involved in the review activity, their pay grades, and an estimate of the percentage of time expended on discharge review activities at each of the boards and courts.

We estimate that 14 percent of the personnel costs associated with the boards for correction of military or naval records is attributable to reviewing discharges. (See p. 80.) Likewise, not all the review costs of the courts of military review can be attributed to reviewing punitive discharges. However, we estimate that more than 90 percent of the courts' caseload is required because the approved court-martial sentence included a bad conduct or dishonorable discharge.

Our estimate for the discharge review boards does not include the \$4.6 million personnel costs of DOD's Special Discharge Review Program which ran from April through October 1977. This was a one-time program, and the costs are not likely to be incurred again.

PAY AND ALLOWANCES RECEIVED BY  
SERVICE MEMBERS AWAITING SEPARATION

Members involuntarily separated are never entitled to an administrative discharge board hearing unless the reason for separation authorizes a less than honorable discharge. Providing the option of a board hearing greatly adds to the cost of separating these individuals even when they do not exercise this option. We believe that the pay and allowances received by these people awaiting finalization of the separation is a lost cost since they have already been judged by their immediate commander as unfit for retention, are being processed for the most serious adverse reasons, and are eventually separated.

In fiscal year 1977 the Government spent \$35.1 million more in pay and allowances to service members awaiting final disposition of discharges for misconduct and unsuitability in the Army than it would have if the services had separated the individuals for marginal performance--the most expeditious means to separate the individual. The estimated costs incurred by the services because of this additional processing time are summarized below.

<u>Reason for discharge</u>	<u>Costs</u> (millions)
With board hearing:	
Misconduct	\$16.9
Unsuitability (Army only)	<u>4.8</u>
	<u>\$21.7</u>
Without board hearing:	
Misconduct	10.4
Unsuitability (Army only)	<u>3.0</u>
	<u>13.4</u>
Total	<u><u>\$35.1</u></u>

In all the services, members discharged for misconduct are given the right to an administrative discharge board hearing. However, only the Army gives this right to all members being separated for unsuitability. As shown in the schedule above, we estimate that it costs the Army almost \$8 million more to provide members being separated for unsuitability the option of a board hearing than it would if it restricted this right to service members with 8 or more years of service as required by the DOD directive.

To find out how much longer it takes to separate people given the option of a board hearing than those who are not, we performed a test of Army personnel discharged for adverse reasons at Ft. Riley during calendar year 1978. Our sample included 125 cases of people separated for marginal performance, 139 for misconduct, and 47 discharged in lieu of court-martial. We did not analyze any separations for unsuitability because the records were not readily available.

People separated at the Army location who had the right to board hearings exercised it in 36 percent of the cases. Our estimate is based on the assumption that people separated for unsuitability who also had this right exercised it servicewide at the same rate as those separated for misconduct.

The processing times for each reason for discharge are shown in the following schedule.

<u>Reason for discharge</u>	<u>Days to process</u>		
	<u>Average</u>	<u>Minimum</u>	<u>Maximum</u>
Marginal performance	20	1	54
In lieu of court-martial	26	9	50
Misconduct, board hearing waived	54	11	190
Misconduct, board hearing	116	67	180

As shown above, separation for marginal performance is more expeditious than any other adverse reasons, taking an average of 20 days. In contrast, separation for misconduct took an average of 116 days with an administrative discharge review board hearing and 54 days when the member waived this right.

#### Discharges for misconduct and unsuitability with a board hearing

We estimate the services spent about \$21.7 million more in pay and allowances to service members awaiting separation who elect a board hearing than would have been incurred had

these individuals been discharged for marginal performance. This is because processing people for misconduct and unsuitability with a board hearing took an average of 96 days more than the 20 days to process people for marginal performance. Our estimate of the additional costs is shown below.

<u>Service</u>	<u>Number of discharges for</u>		<u>Additional costs incurred</u>
	<u>Misconduct</u>	<u>Unsuitability</u>	
			(millions)
Army	1,858	1,732	\$10.4
Navy	3,082	(a)	8.2
Marine Corps	659	(a)	1.7
Air Force	<u>563</u>	<u>(a)</u>	<u>1.4</u>
Total	<u>6,162</u>	<u>1,732</u>	<u>\$21.7</u>

a/Not applicable.

Discharges for misconduct and unsuitability without a board hearing

We estimate that the services spent about \$13.4 million more in pay and allowances to members awaiting separation when the board hearing was waived than would have been incurred had the individuals been discharged for marginal performance. Because only the Army provides all its service members separated for unsuitability the right to a board hearing, we did not include any costs for the other services in imposing discharges for this reason.

Discharges for misconduct and unsuitability without a board hearing took an average of 34 days more to process than discharges for marginal performance. Our estimate of the additional costs is shown on the next page.

<u>Service</u>	<u>Number of discharges for</u>		<u>Additional costs incurred</u>
	<u>Misconduct</u>	<u>Unsuitability</u>	
			(millions)
Army	3,303	3,079	\$ 6.3
Navy	5,480	(a)	5.1
Marine Corps	1,171	(a)	1.1
Air Force	<u>1,002</u>	<u>(a)</u>	<u>.9</u>
Total	<u>10,956</u>	<u>3,079</u>	<u>\$13.4</u>

a/Not applicable.

REPORTS PERTAINING TO THE DISCHARGE SYSTEMGAO

<u>Addressee</u>	<u>Report title, number, and issue date</u>
The Congress	"AWOL in the Military: A Serious and Costly Problem" (FPCD-78-52, Mar. 30, 1979)
The Congress	"Fundamental Changes Needed To Improve the Independence and Efficiency of the Military Justice System" (FPCD-78-16, Oct. 31, 1978)
The Congress	"Eliminate Administrative Discharges in Lieu of Court-Martial: Guidance for Plea Agreements in Military Courts is Needed" (FPCD-77-47, Apr. 18, 1978)
The Congress	"Military Jury System Needs Safeguards Found in Civilian Federal Courts" (FPCD-76-48, June 6, 1977)
The Secretary of Defense	"Millions Being Spent To Apprehend Military Deserters Most of Whom Are Discharged As Unqualified for Retention" (FPCD-77-16, Jan. 31, 1977)
The Congress	"The Clemency Program of 1974" (FPCD-76-64, Jan. 7, 1977)
The Secretary of Defense	"People Get Different Discharges in Apparently Similar Circumstances" (FPCD-76-46, Apr. 1, 1976)
The Secretary of Defense	"More Effective Criteria and Procedures Needed for Pretrial Confinement" (FPCD-76-3, July 30, 1975)
The Congress	"Uniform Treatment of Prisoners Under the Military Correctional Facilities Act Currently Not Being Achieved" (FPCD-75-125, May 30, 1975)
The Secretary of Defense	"Urgent Need for a Department of Defense Marginal Performer Discharge Program" (FPCD-75-152, Apr. 23, 1975)

Senate Committee  
on Armed Services

"Need For and Uses of Data Recorded  
on DD Form 214 Report of Separation  
From Active Duty" (FPCD-75-126,  
Jan. 23, 1975)

The Congress

"Improving Outreach and Effectiveness  
of DOD Reviews of Discharges Given  
Service Members Because of Drug  
Involvement" (B-173688, Nov. 30, 1973)

DOD

"Report of the Joint-Service Administrative Discharge Study  
Group (1977-78)," Department of Defense, August 1978.

"Report of the Task Force on the Administration of Military  
Justice in the Armed Forces," Department of Defense, Nov. 30,  
1972.

EXAMPLES OF COURT CASES RECENTLY DECIDED, ON  
APPEAL, AND IN LITIGATION CHALLENGING THE  
ADMINISTRATIVE DISCHARGE SYSTEM

1. Giles v. Secretary of the Army, civ. number 77-904 (D.D.C. filed May 27, 1977). This lawsuit challenged the Army's policy of issuing less than fully honorable discharges to service members separated for drug usage on the basis of involuntary urinalysis testing. Although the U.S. Court of Military Appeals held in 1974 that such testing violates article 31 of the Uniform Code of Military Justice, the Army refused to recharacterize the pre-1974 derogatory discharges which were imposed on the basis of this testing. In November 1979 the court decided in favor of the plaintiff and ordered the Army to automatically upgrade more than 10,000 discharges affected.
2. Veterans Education Project v. Secretary of the Air Force, et al., civ. number 79-0210 (D.D.C. filed Jan. 19, 1979). This is an action under the Freedom of Information Act to require the defendants to furnish agency records showing the full name and last known address of former service members who are now eligible, as a result of the recently enacted Public Law 95-126 and the new DOD Directive 1332.28, to apply for discharge upgrades. The plaintiff wants this information in order to mail individuals who were issued and still hold less than fully honorable discharges information concerning their rights, contending that unless they are made aware of recent changes they are not likely to apply for a discharge upgrade.
3. National Association of Concerned Veterans v. Secretary of Defense, civ. number 79-0211 (D.D.C. filed Jan. 19, 1979). The plaintiffs seek, on behalf of all service members who are eligible to apply to discharge review boards, declaratory, injunctive, and mandatory relief to the adjudicatory process used by the defendant to review the discharge characterization of service members who have been issued less than fully honorable discharges. The following aspects of this process are challenged:
  - a. Written standards which are not sufficiently specific to eliminate inconsistencies in discharge review board decisions that result in individuals with similar service records being treated differently. The failure to promulgate and publish standards that properly structure agency discretion to eliminate this problem violates the due process under the

fifth amendment, fundamental principles of administrative law, the statutory mandate that discharge characterizations be reviewed under published uniform standards (Public Law 95-126) and the Freedom of Information Act.

- b. Failure of the discharge review boards to index, publish currently in the Federal Register, or make available for public inspection and copying many of the rules, policies, and interpretations under which they operate on the grounds that this failure also violates the Freedom of Information Act.
  - c. Failure of the discharge review board to apply numerous substantive and procedural rules that by law they are required to apply and to publish such rules in the Federal Register.
4. Harvey v. Secretary of the Navy, civ. number 76-1761 (D.D.C. filed Sept. 20, 1976). This class action challenges the Navy Discharge Review Board's denial of discharge upgrades in 157 Marine Corps cases which were decided in violation of the Board's regulations. These regulations require that a Marine Corps Board member act as president of the review panel. The court ordered that the Navy reconsider the subject cases before a board at which a Marine Corps officer presides and that concerned individuals be so notified.
  5. Maness v. Department of the Army, civ. number 77-2164 (D.D.C. May 25, 1978). In this case the plaintiff attempted to establish the Privacy Act as an alternative to discharge review boards in seeking discharge upgrades. The Privacy Act helps an individual in requesting amendment of any information in the agency's files which is not "accurate, relevant, timely, or complete," and the plaintiff contended that his service characterization was inaccurate under Army regulations and should be upgraded to honorable. In a stipulation of dismissal, the Army amended the plaintiff's records to show an honorable discharge and agreed to pay the plaintiff \$1,300 in full payment of the plaintiff's claim for attorney's fees and other litigation costs incurred in this action. However, neither party conceded to the validity or merits of the other's legal position.

6. Roelofs v. Secretary of the Air Force, civ. number 76-2774 (D.D.C. filed Oct. 28, 1977), appeal pending (number 77-2088 D.C. Cir.). The plaintiff challenges his general discharge for a civilian court conviction for possession of heroin with intent to distribute contending that a derogatory discharge imposed for this reason exceeds the military statutory and constitutional authority. This is because the Air Force does not require that the conduct involved adversely affects the quality of the individual's military service.
  
7. Wood v. Secretary of Defense, civ. number 77-0684 (D.D.C. filed April 20 1977). The plaintiffs brought this class action suit on behalf of all former service members who possess less than fully honorable discharges because of their civilian conduct while in the inactive reserves. The contention is that the civilian conduct of the plaintiffs and the class they represent in no way affected the quality of military service rendered and that the defendants' action was, therefore, in excess of statutory and constitutional authority and also violated the Administrative Procedures Act.



MANPOWER  
RESERVE AFFAIRS  
AND LOGISTICS

ASSISTANT SECRETARY OF DEFENSE  
WASHINGTON, D. C. 20301

11 OCT 1979

Mr. H. L. Krieger  
Director, Federal Personnel  
\* and Compensation Division  
U.S. General Accounting Office  
Washington, D. C. 20548

Dear Mr. Krieger:

This is in reply to your letter of August 29, 1979, to the Secretary of Defense regarding your draft report entitled "Military Service Should Not Be Characterized: Present Discharge Practices Are Inequitable, Costly, and Lack Due Process," OSD Case #5270, FPCD-79-81.

The report concludes that characterization of military service should be eliminated because the practice serves no useful purpose, impedes prompt and efficient separation, and results in unfair branding of members involuntarily separated. In support of this conclusion, the report expresses the view that wide disparities exist among the Services in their application of the administrative discharge standards, and the present system lacks adequate procedural safeguards, is used to circumvent judicial processes, and is contrary to the will of Congress. The report also concludes that courts-martial should not make decisions regarding the fitness of members for military service, except in those cases where continued service would be clearly inimical to interests of the Armed Forces or the Nation (e.g., treason).

The Department of Defense is opposed to the recommendation that service characterization be eliminated entirely. This proposal is based on an inaccurate view of the military's role in the separation process of its members. The issuance of an honorable discharge is conditioned upon proper conduct and satisfactory performance of duty, and serves as a positive incentive throughout a member's career. Less than honorable discharges are not issued indiscriminately or capriciously. Departmental directives include procedural safeguards to insure that the member's rights are adequately protected in administrative discharge proceedings, and that the character of the discharge awarded reflects the quality of a member's service. A punitive discharge is issued only upon the approved sentence of a court-martial convened under the Uniform Code of Military Justice.

The underlying premise of the GAO report is that service in the Armed Forces is not essentially different from civilian employment. For example, the discussions on page 48-51 concerning the impact of an adverse discharge on employment opportunities compare industry's treatment of separated employees with that of the Armed Forces. Such

reasoning is fallacious and misleading; it could easily guide the casual reader toward the predictable, but erroneous, conclusion that the Armed Forces should be considered a civilian employer. The facts are that the military is, by necessity, a specialized community governed by a separate discipline from that of the civilian. The unique nature of the military, characterized by its heavy emphasis on duty and discipline, has no counterpart in civilian society. Therefore, equating military service to civilian employment, even in today's peacetime environment, is a non sequitur. Failure to account for the differences during mobilization or wartime is a serious analytical flaw.

While the report advocates elimination of service characterizations, it does not assess the implications of such action, if adopted, upon those agencies, both federal and state, which depend largely on service characterization in determining eligibility for veterans benefits or preferential treatment. It would not appear to be equitable or cost effective to provide those benefits by which this country has traditionally rewarded honorable and faithful service to those former members whose service has not met the requisite standards. As recently as 1977, Congress affirmed its support for the concept of rewarding only honorable service in Public Law 95-126 which prohibits the provision of veterans benefits, following the Presidential Special Discharge Programs, except in those cases which the individual's service is measured against uniform standards "historically consistent with criteria for determining honorable service" [38 U.S.C. 3103(e)(1)]. The total absence in the report of any discussion of Public Law 95-126 or its legislative history is a glaring omission that casts doubt upon the objectivity of the research behind the report.

Further, the report does not adequately address the effect elimination of service characterization would have on those former members who received an other than honorable discharge. The concepts advocated in the report suggests a conclusion, unstated but implied, that all such former characterizations also be eliminated. A question remains as to the resulting cost of determining benefit eligibility in those cases after the very basis for previous determination of benefit eligibility has been eliminated.

Aside from the faulty equation between military and civilian society, the draft report attempts to indicate that military separation policies are more stigmatizing than those found in civilian life. The sole source of support for this premise is a 1946 study. Much has changed since then both in the military and civilian community. Before reaching adverse conclusions about the characterization system, more recent data should be consulted.

A further major flaw in the report stems from the failure to support the premise in the title -- that discharge procedures "lack due process." There is a total absence of legal analysis that supports this legal conclusion. It is difficult to respond to such broad charges when there is such a failure to provide analytical support.

In the view of this Department, the issues raised above are highly relevant to the merit of any proposal to eliminate the present practice of discharge characterizations. The absence of substantive comment on these issues in your draft report significantly lessens the value of the document.

Detailed comments are contained in the enclosure on each of the specific recommendations.

Thank you for the opportunity to respond to your draft report.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. B. Pirie, Jr.", with a horizontal line extending from the end of the signature.

**Robert B. Pirie, Jr.**  
**Assistant Secretary of Defense (MRA&L)**

Enclosure

GAO RECOMMENDATION: Revise DoD Directive to eliminate the requirement to characterize military service and direct Service Secretaries to discontinue this practice. (p. 89)

DoD Comment: The underlying premise of the GAO draft report is that military service is not essentially different from civilian employment. This is false. Military duty is more than employment -- it is service to the country and its demands have no counterpart in the civilian sector. Individual self-interest must become secondary to the ability of the services to function in time of peace or war. The military is, as often recognized by the Supreme Court of the United States, "a specialized community governed by a separate discipline from that of the civilian." [Orloff v. Willoughby, 345 U.S. 83, 94 (1953)]. The differences between the two communities stem from the fact that "it is the primary business of armies and navies to fight or be ready to fight wars should the occasion arise." [United States ex rel. Toth v. Quarles, 350 U.S. 11, 17 (1955)]. As the nature, circumstances, and requirements of military service are unique and demanding and have no counterpart in the civilian sector, it is only fitting that a grateful nation make appropriate recognition of that service at its conclusion. Embodied in this program is the requirement to recognize all types of service including that which is less than honorable. It has long been DoD policy that the Armed Forces have the right and the duty to separate from the Services, with an appropriately characterized discharge certificate, military personnel who are not qualified for continued service or who have completed their obligated tour of duty.

Service characterization serves a valid and legitimate purpose to the extent it constitutes a statement of personal achievement, or the lack of it, in service to the country. It is grossly inappropriate to describe this practice as "punishment," "outmoded," or "devoid of any value to society" (p. 84 of draft GAO report). The overwhelming majority of veterans who served honorably should not be required to forego their earned recognition to provide obscurity to those few who failed to render such service. The intent of the GAO report appears to be oriented toward benefiting a small percentage of former members without adequately examining the basic principles which underlie the service characterization system. In this connection, it should be noted that since 1950, over 21 million discharges have been issued of which 93 percent were honorable. Furthermore, 54 percent of the 1.5 million "bad paper" veterans mentioned in the GAO report received a General Discharge that did not affect the VA benefits to which they might otherwise have been entitled.

The Department of Defense is sensitive to the fact that individuals issued administrative discharges under less than fully honorable conditions may encounter difficulty in civilian life because of the stigmatizing effect associated with such discharges. Our fundamental concern is to provide a separation system which will recognize the contributions of individuals who serve commendably, and which will also permit the expeditious separation of those not suited to continued service while providing them adequate protection of their basic rights. Consequently, departmental directives specify procedural safeguards designed to ensure fairness in involuntary separation proceedings. It is, of course, a difficult balancing process, and while our current system may require certain refinements to improve procedures, the current three-tiered administrative discharge system provides the required balance.

Our current separation system resulted in large measure from the recommendations of the Special Committee, House Committee on Military Affairs, as contained in House Report No. 1510, 79th Congress, 2d Session, 30 January 1947. That Committee examined the policy then in effect of issuing three types of discharge: Honorable, Dishonorable, and discharge without specification as to the character of service ["Blue Discharge"]. The discharge without specification as to the character of service was severely criticized in that it gave "the impression that there is something radically wrong with the man in question, something so mysterious that it cannot be talked about or written down, but must be left to the imagination" [page 6 of the cited report]. The Report shows a clear Congressional intent that vague and ambiguous characterizations of service be avoided. Further, the Committee considered that by failing to clarify whether a discharge was under conditions other than dishonorable [the general standard for veterans entitlements under 38 U.S.C. 101(2)], the Army was seen as "evading" [page 2] its responsibilities, requiring the Veterans Administration to step in and resolve the issue of the character of the member's service. Some of these same issues were reiterated in later years following Service adoption of the present discharge system during hearings on the "Ervin bills" [e.g., hearings before the Subcommittee on Constitutional Rights, Senate Judiciary Committee, pursuant to S. Res. 260, 87th Congress, 2d Session (1962)]. The House Armed Services Committee, 94th Congress, in hearings on various bills concerning the administrative discharge system, again considered the practice of characterizing service. Although many of the considerations raised in the present GAO report were addressed by the Committee, the Congress declined to change the present system of characterization of service. In particular, Congress' acknowledgment of the current system in the context of its concern as to the effect that the Presidential Special Discharge Program might have on the provisions of veterans benefits was clearly demonstrated in its enactment of P.L. 95-126 on October 8, 1977 [38 U.S.C. 3103(e)]; also see H.R. Rep. No. 95-580, 95th Congress, 1st Session (1977)]. In short, Congress has repeatedly affirmed that the issuance and form of administrative discharges is a function essential and peculiar to the Armed Forces.

As observed by the 1978 Joint-Service Administrative Discharge Study Group, the difficult task of characterization has resulted in some disparities among the Services. To overcome this problem, a proposed revision to DoD Directive 1332.14 is currently being staffed which will provide more specific standards and guidelines controlling discharges. We believe that implementation of this new directive will result in more consistency in characterization among the Military Services.

GAO has not provided any recent data to support its contention that adverse service characterization significantly limits a former member's employment opportunities. Moreover, elimination of characterization would not alter or change the facts contained in a former member's service record in a substantive way. It is submitted that prospective employers will continue to demand evidence of satisfactory service from individual applicants as a precondition to employment.

GAO RECOMMENDATION: Develop criteria establishing time frames for the Services to meet in processing people for separation. (p. 90)

DoD Comment: DoD concurs with the intention of this recommendation and will study the feasibility of placing reasonable time guidelines for processing separation cases. However, data on processing time used by GAO from one installation should not form the basis for judgment of all Services. A quick review indicates the processing time used for the cost analysis in the GAO report to be excessive. Although quick and efficient separations are the goal of DoD, they are not processed to the extent that potentially productive members are prematurely attrited without adequate procedural safeguards. Efforts at inducing an acceptable level of performance must have failed or proved futile before separation is pursued. Some members clearly require greater attention than others. Thus, the process must inevitably be personalized. To the extent such personalization detracts from the speed of the processing, it provides a better guarantee of procedural safeguards for the individual and a better means of controlling attrition. In selecting the appropriate protections, a balance must be struck between the amount of time and resources which should reasonably be devoted to the process and the adverseness of the potential ramifications to the service member concerned. The current system attempts to do just that. Commanders must continue to have flexibility to ensure due process, and therefore, it may be impracticable to establish identical interservice time guidelines. Consequently, this recommendation requires further evaluation.

If GAO's recommendation to provide boards to all members being processed for discharge were to be adopted, the Services would be less, not better, able to adhere to the time standards GAO wants implemented. Each board convened, as opposed to non-board processing, carries the inherent risk of unprogrammed requests for delay [e.g., unavailability of requested counsel, requests for essential witnesses not in the immediate area, etc.]. Such requested delays cannot be programmed for, and denial would often amount to the member not being afforded due process. Accordingly, we view GAO's recommendation of establishing processing time frames as inconsistent with their recommendation of affording boards to everyone.

GAO RECOMMENDATION: Give all individuals separated against their will the option of hearings before independent boards empowered to establish on the basis of member's service records, whether the separations are justified and prescribed procedures were followed in such matters as counseling and other rehabilitative efforts. (p. 90)

DoD Comment: DoD opposes giving board entitlement to all members being processed for involuntary separation. We do not believe that such an approach will serve the interests of the individual or the Military Service. All members with a substantive investment in a service career, either in length of service or acquired rank, are afforded the right to a board hearing. A proposed revision to DoD Directive 1332.14 will require a board hearing for all members who are E-4 and above or who have five or more years' service when recommended for involuntary separation for cause.

Those who request discharge in lieu of courts-martial are not provided a board but they are offered legal counsel to assist them in preparing statements and other documentation for presentation to the discharge authority. Also, boards are not required for members subject to involuntary discharge for marginal performance, but each such individual is likewise provided the assistance of legal counsel. All members being considered for separation for reason of misconduct are entitled to boards. In addition to legal counsel and board entitlements (if authorized), most involuntary separations for cause are subject to legal review for sufficiency prior to final action by the discharge authority. Here again and as indicated above, the intent is to ensure that every individual is provided due process.

Historically, boards require more processing time and, as the GAO has stated, cost more than 55 million dollars annually. Yet the GAO advocates that all persons be given the option of a board hearing -- alleging that characterizing service is the barrier to quick and efficient separation. In response, the primary charter of all boards is first to determine whether an individual should be retained in the service. The service characterization is a secondary requirement which is virtually a concurrent determination. The real and continuing cost and associated time requirement is the board process itself. The basic issue is one of protecting the tenure rights of individuals beyond a given point of service or grade, as well as those facing separation for misconduct. Naturally, we would expect costs to increase if all involuntary separatees were entitled to a board.

Finally, there is involuntary separation other than non-productivity, non-adaptability, or misconduct. Such separations could be in the form of force reduction to meet Congressional mandated end-strength. In these cases, neither board action nor counsel is appropriate.

GAO RECOMMENDATION: The Congress should require the Services to tell prospective recruits -- specifically those in categories having a high probability for being involuntarily separated -- the risk they are taking of receiving derogatory service characterizations and the potential consequences of such characterization. (p. 91)

DoD Comment: Currently DoD uses DD Form 4/1 through 4/5 for all enlistment/reenlistments into the Armed Forces of the United States. Part C, items 11a and 11a(2) state, "My enlistment is more than an employment agreement. As a member of the Armed Forces of the United States, I will be... (a) [s]ubject to separation during or at the end of my enlistment. If my behavior fails to meet acceptable military standards, I may be discharged and given a certificate for less than honorable service, which may hurt my future job opportunities and my claim for veteran's benefits...." Upon completion of reading this statement and other existing U.S. laws, the individual acknowledges the information by signing the form. DoD believes it cannot segregate the potential involuntary separatees at initial enlistment as numerous factors and

intangibles will interact during an individual's service career that ultimately will determine the degree of service success. It is not appropriate for a Service recruiter, at initial enlistment, to make such a presumptive judgment based on available information, and provide a more detailed warning to those who might initially possess a higher probability of failure.

GAO RECOMMENDATION: That the Congress revise the UCMJ to remove authority for characterizing discharges imposed by courts-martial and limit separations under judicial process to crimes against the country, such as treason. (p. 91)

DoD Comment: Punitive discharge is an integral part of the military criminal justice system and, as a general deterrent, is essential to the maintenance of good order and discipline. It should continue to be an authorized punishment for certain offenses and the type of discharge authorized should continue to depend on such factors as the gravity of the offense committed.

While civilians may change occupation or employment at will, service members undergo a status change when they enter the Armed Forces. Offenses committed while in military status are not only a criminal act, but it may violate that status and require expulsion of the member concerned from the Service. Authorized punishment in the form of a punitive discharge, when commensurate with the extent of the criminal offense and the violation of military status, is appropriate.

The GAO's statement that punitive discharges are not a conventional form of punishment, as they are not part of the civilian criminal justice system (page 87), ignores the fact that the system of military justice is not a conventional criminal justice system. Historically, punitive discharges have long been a part of the military justice systems. The authority to adjudge a punitive discharge after a service member has received a fair trial is part of the present military justice system under the UCMJ as established by Congress. Congress should not eliminate such discharges.

The GAO states that receiving a Federal conviction is stigma enough, particularly in crimes unique to the military (page 87). In that regard, desertion (Article 85, UCMJ) and misbehavior of a sentinel (Article 113, UCMJ) are unique military offenses, yet punitive discharges are unquestionably appropriate for such offenses.

The GAO's recommendation that Congress should limit discharges (uncharacterized) imposed by courts-martial to crimes against the country (page 91) is confusing. The GAO states (page 88) that "continued service by these individuals would be incompatible with the military mission." Surely the retention of other offenders (e.g., robbers, rapists, and deserters) would also be incompatible with the military mission of maintaining a disciplined, fighting force capable of defeating an enemy in combat. Although GAO would authorize discharges in cases involving offenses against the country, they see no merit in their characterization (page 88). Apparently the basis for this is that the death penalty is "authorized for these crimes and conviction

of spying carries a mandatory death sentence." Although unclear in the draft, GAO infers that authorization of the death penalty makes punitive discharges unnecessary as a deterrent or punishment. This conclusion ignores the fact that a death sentence has not been executed in any of the Services since 1961.

Office of the  
Administrator  
of Veterans Affairs

Washington, D.C. 20420



DECEMBER 31 1979



Mr. Gregory J. Ahart  
Director, Human Resources Division  
U. S. General Accounting Office  
Washington, DC 20548

Dear Mr. Ahart:

This replies to your request for comments on the draft report, "Military Service Should Not Be Characterized: Present Discharge Practices Are Inequitable, Costly, and Lack Due Process." The Veterans Administration (VA) takes strong exception to the conclusions and recommendations in this report, especially since the General Accounting Office (GAO) did not take into account the tremendous cost VA would incur if the Department of Defense (DoD) implements the report recommendations to eliminate discharge characterization. In the past, the VA and GAO have had a very good working relationship and we have always willingly discussed our programs with GAO representatives. For that reason we find it difficult to understand how the conclusions were reached and why the recommendations were made without first discussing some of the ramifications with VA officials.

The GAO concludes the current system for qualitatively categorizing periods of service is both undesirable and unworkable and states (1) derogatory discharge characterizations' adverse effects on postservice lives outweigh whatever use they may have to the service and civilian society; (2) the current systems for the issuance and review of these characterizations deny equal protection; (3) the system for issuing administrative discharges, including those accepted in lieu of courts-martial, violates procedural due process; (4) the assignment of punitive discharges serves no constructive purpose; and (5) the procedures for issuing and reviewing categoric discharges are too costly.

The point most emphasized by GAO is that the employment discrimination faced by holders of less than honorable discharges is too high a price to pay for what GAO sees as the system's limited value to the military. It is argued that service personnel are not adequately briefed before service entry about the serious ramifications of a bad discharge and, in any event, the misdeeds for which they are issued can largely be attributed to the immaturity of persons in a demanding, far-from-home environment with which they cannot cope.

We believe the extent to which service personnel, not all volunteers, should be held responsible for their behavior is a policy question for DoD to address. No one of any age can be expected to anticipate all of the physical and mental rigors and deprivations which can accompany some military training and duty. However, anyone of consensual age should realize that it is not "just another job." There may be misunderstandings

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that the defense of our nation is not serious business, and that failure to comply with oaths pledging obedience to lawful command will result in nothing less convenient than an "early out."

Rather than delineate DoD's reasons for retaining a characterization system, the report focuses on the harmful effects the system can have on its transgressors, a group largely composed of educationally deprived persons under the age of 20, and representing a disproportionate number of racial minorities, who GAO believes are further disadvantaged by service failures. Because the armed services must exact a measure of discipline and performance beyond the demands of many civilian employers, successful completion of military duty is highly regarded in private industry. Commands cannot be expected to issue individual job recommendations to inquiring employers, but even if that were possible, the persons with less than honorable service would be identified. GAO states there are enough other ways for the military to depict meritorious service, but the fact remains there is no way to shield the military work histories of the maladjusted without pulling the successful down to the same meaningless common denominator.

The GAO believes the system is incurably unfair because different approaches are used by the authorities who issue and review discharges, and statistics indicate significant differences in processing administrative and punitive discharges. The report points out that the three Discharge Review Boards differ greatly in their upgrading rates despite the fact that by statute and DoD directive the same standards apply. Because the Review Boards upgrade a considerable number of discharges, GAO concludes that individuals who do not apply are disadvantaged. The Boards for Correction of Military Records also vary greatly in the rates of relief granted. These Boards consider postservice conduct in amending service discharges but no written guidance exists on the weight to be given postservice factors; current legislation requires that each case be decided on its own merits. The GAO believes that, to a large degree, the inequities in these upgrading systems would be eliminated by discontinuing the practice of characterizing military service. The report does not address the problems of disposing of pending appeals or already imposed characterizations.

"Substantive due process" requires that the rights of persons in like circumstances be equally protected by the Government. We believe GAO did not adequately explore the methods by which the current system could be improved, but concluded that it "is unlikely that a high degree of uniformity will ever be achieved due to the system's subjective nature. Regardless of how definitive and restrictive the policy guidance is, differing attitudes will result in unacceptable variations in its implementation."

The GAO would prohibit discharges in lieu of courts-martial, a practice not unlike plea bargaining in civilian criminal law, which can have advantages for both the prosecution and accused. It is not clear if this

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opposition is grounded more in reliance on the retention of discharge characterizations for bargaining purposes, or in a perceived inequity in its application. As long as an accused has access to competent counsel, we do not view the practice as undesirable.

The GAO "conservatively" estimates the current discharge characterization system costs \$55 million annually. The greatest part of this consists of pay and allowances for members awaiting separation. The report contains no estimate of the added costs which would ensue if the additional recommended procedural safeguards, such as hearings for all persons involuntarily discharged, are adopted. Neither is the effect of GAO's proposed changes on administering VA benefits programs discussed. Eliminating discharges in lieu of courts-martial could also result in additional procedural expenses, if additional cases go to trial.

It is not necessary that character of discharge be shown on documents available to the public. As of October 1, 1979, the revised DD Form 214 no longer shows character of discharge on copy number one given to the veteran. GAO did not address the effect of this change, which may accomplish their intent of not stigmatizing service.

This change is not expected to delay determining VA eligibility for some veterans benefits as the information on character of discharge is available on the copy now provided the VA. These copies are used to add discharge data on the veteran to the computer file for the Veterans Assistance Discharge System and the Beneficiary Identification and Records Locator Subsystem (BIRLS). Once this is done, it only takes minutes for the VA to recover the information via on-line computer terminals in our regional offices.

The language on page 90 of the draft report can be construed as permitting VA and DoD to agree on the information to be furnished on the VA's copy of the DD Form 214; this would avoid the administrative burden which would otherwise fall on the VA--determining eligibility for all veterans requesting benefits. If this is GAO's intent, it should be clearly spelled out as a requisite rather than left to interpretation. This would continue the current practice in which the veteran receives a clear copy of the DD Form 214 while the VA receives a characterized copy.

Until the Congress changes the appropriate laws, character of service is the most critical factor in determining eligibility for most VA benefits. The VA does not "look behind" discharges issued under honorable conditions. GAO reports this constitutes over 90 percent of all discharges, increasing to 99 percent for persons who serve to the end of their enlistment. Therefore, removing all references to character of discharge from documents routinely available to this Agency would require eligibility determinations for veterans who are now identified as eligible by virtue of an honorable discharge. The VA would be affected by an increase in workload and cost,

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and delays in processing timeliness; consequently, the veteran beneficiary would suffer the effects. Without information on the character of military service, original disability and education claims, loan guaranties, unemployment claims, and requests for care at VA medical facilities would require a review of military records to determine eligibility.

Under GAO's proposal, approximately 131,255 original disability claims and 247,655 education applications submitted in Fiscal Year (FY) 1978 would have required an eligibility determination. Currently, this determination is not needed. If character of service information had not been available, the review of all separation documents and further military records for this number of claims would have required an additional 333 employees at a cost of approximately \$6.813 million in salaries alone.

The proposal's effect would be to increase claim processing time from 60 to 90 days, the time normally required to obtain service records. This delay in authorizing payments would impose hardships on indigent veterans applying for pension and on veteran students requesting education benefits for tuition payments.

Discontinuing characterization of military service at discharge would have a serious effect on veterans' ability to obtain VA home loans. A determination of basic eligibility for loan benefits could take ten weeks to four months over and above that needed by the lender and VA to process the loan application. This would be an intolerable delay if a real estate transaction were in process.

Veterans often enter into contracts to purchase with VA financing before actually establishing their eligibility for the loan benefit. Time is of the essence in real estate transactions, and the added time needed to characterize a veteran's discharge could result in the home being sold to another purchaser or an increase in the price of the home beyond the veteran's ability to pay. Frequently, veterans obligate themselves for the appraisal and credit report fees, so the loss of funds deposited for this purpose--possibly as much as \$100--would also result.

To reduce delays to the minimum possible in cases where a veteran has not previously been determined eligible for VA financing, lenders often simultaneously submit loan applications with a request for determination of eligibility. Credit and income verifications supporting the application cannot be considered reliable after 60 days from the date of verification; thus, the additional time needed to characterize the veteran's service and determine eligibility would make the verification outdated. Added delay and expense to the veteran, lender, and seller would result while current credit information is obtained.

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To a large degree, the financial viability of lenders is dependent on their ability to adjust mortgage production to the vagaries of the cost of money for home loans. The difficulty in making such adjustments increases proportionately with the time it takes from the date of loan application to placement of the closed loan with a secondary investor. If this time were substantially increased because of VA's additional processing to characterize service, it is quite likely that many lenders would come to view VA-guaranteed loans as less attractive than other types of financing methods from a risk/yield standpoint.

Lenders participate in the VA loan program on a voluntary basis, and any widespread loss of interest by lenders, coupled with a general reluctance by sellers to hold their homes off the market for an extended time, would seriously impair veterans' ability to purchase housing with their GI home loan benefit. Our efforts to persuade lenders and others to deal with veterans who wish to use their loan benefit is often hampered by perceptions that the VA loan program involves red tape and processing delays. Despite such perceptions, over 370,000 veterans were able to purchase housing last year with VA financing (over 10 million cumulatively). If GAO's recommendation that the service departments discontinue service characterization is adopted, our effectiveness in assisting veteran homebuyers will certainly be reduced.

Elimination of characterization of service could also affect due process rights with regard to veterans' benefits. Everyone benefits when information needed to determine eligibility is current. Not all veterans apply for benefits immediately after release from active duty; for example, many burial claims arise decades after separation from service. Current due process requirements extend the right to hearings and the right to call witnesses. Even at a limited time after separation, this would impose a burden on the claimant and could be difficult to accomplish. DoD could conceivably be required to locate inservice witnesses and bring them to hearings. Finally, the longer the period between separation and the decision on eligibility, the more difficult it would be to reconstruct the chain of evidence, thereby reducing the possibility of an equitable due process decision.

The VA's National Cemetery burial, headstone, and marker programs are based on title 38, *United States Code*, and stipulate that the veteran must have been discharged or released under conditions other than dishonorable. At present, the cemetery directors are accepting a copy of the discharge showing the character of service as a basis for permitting interment. Under the proposed plan to eliminate the character of service, it would be necessary to go into the VA record or, in the absence of a VA record, the GSA Federal Records Center, to obtain this data. This would be complicated by the fact that BIRLS is not available on the weekends to identify the appropriate VA Regional Office so the file could be reviewed. It is unlikely

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that personnel would be on duty at our Regional Offices on weekends. The alternative would be to contact the GSA Federal Records Center on weekends, as was done in the past. This would entail GSA having personnel on duty. It is important that families of the dead be able to plan funerals and notify family members and friends shortly after the death. Verification of service in order to authorize burial and furnish headstones and markers is not a formidable problem, but it will require planning if GAO's recommendations are implemented.

Medical benefits may be unnecessarily delayed as a result of the lack of character data. Access to BIRLS is available to our medical centers and eligibility for medical benefits can be readily determined if the veteran has filed an earlier claim. Absent a prior claim, our medical centers provide care, based on the character of discharge shown on the DD Form 214 presented by the veteran. Eliminating this information from the DD Form 214 would require our medical facilities to request character of discharge information from VA Regional Offices for all new applicants for care.

During FY 1979, we estimate that 900 days of inpatient care, at \$151 per day, were provided ineligible veterans because eligibility determinations were needed. Assuming that the time required to obtain this data from the Department of Veterans Benefits (DVB) will double if the character of service is no longer on the DD Form 214, the added cost of inpatient care for ineligibles would approximate \$136,000.

Dental benefits will invariably be delayed by the number of days required to obtain the military records and determine the character of service. Veterans must apply for their one-time dental benefit within one year of discharge, and approximately 49 percent do so. A character determination would, therefore, be required on 237,857 discharges per year. According to DVB, it presently takes 36 days from the time eligibility is requested until the information is returned to the Department of Medicine and Surgery (DM&S). The manpower cost to DM&S for processing the determinations for dental care, based on FY 1978 discharge statistics and current salary levels for eligibility clerks, is \$1,202,109. In addition, any veteran not among the 49 percent applying for dental care, but subsequently applying for medical care, will represent added workload and costs.

Of the 493,585 active duty personnel released in FY 1978, 1,823 received bad conduct discharges. These persons may be entitled to medical benefits. Dishonorable discharges were issued to 160 persons, (.0003 percent of the total), making them definitely ineligible for any VA benefits. If all of the 1,823 who received bad conduct discharges are also found ineligible, the maximum number of ineligibles is 1,983, or .004 percent of the total. These statistics do not take into account those 15,054 other-than-honorably discharged persons, who may be eligible for some benefits. It is against

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all logic to eliminate the character of discharge in order to protect these few individuals who have been given the character stigma. Not only is a sizeable additional workload generated, but honorably released individuals are given no better recognition for their service than the small number of problem individuals.

We would like to reemphasize that we oppose eliminating the character of service at the time of separation. In addition to increased costs, the resultant administrative burden for the VA in determining eligibility for veterans benefits on all claims would be considerable. The effect on the veterans and their families would be delays in claim processing, serious effects on the VA home loan and education programs, possible withholding of medical care, and inconvenience in obtaining burial benefits. The veterans' rights to due process would also be impaired by increasing the time interval between the eligibility determination and the circumstances leading to discharge.

Failure to give recognition to persons with exemplary service in order not to stigmatize those who place self-interests above the good of the military service or above that of their fellow man, can only reinforce the bad performance or behavior of the undeserving.

Sincerely,

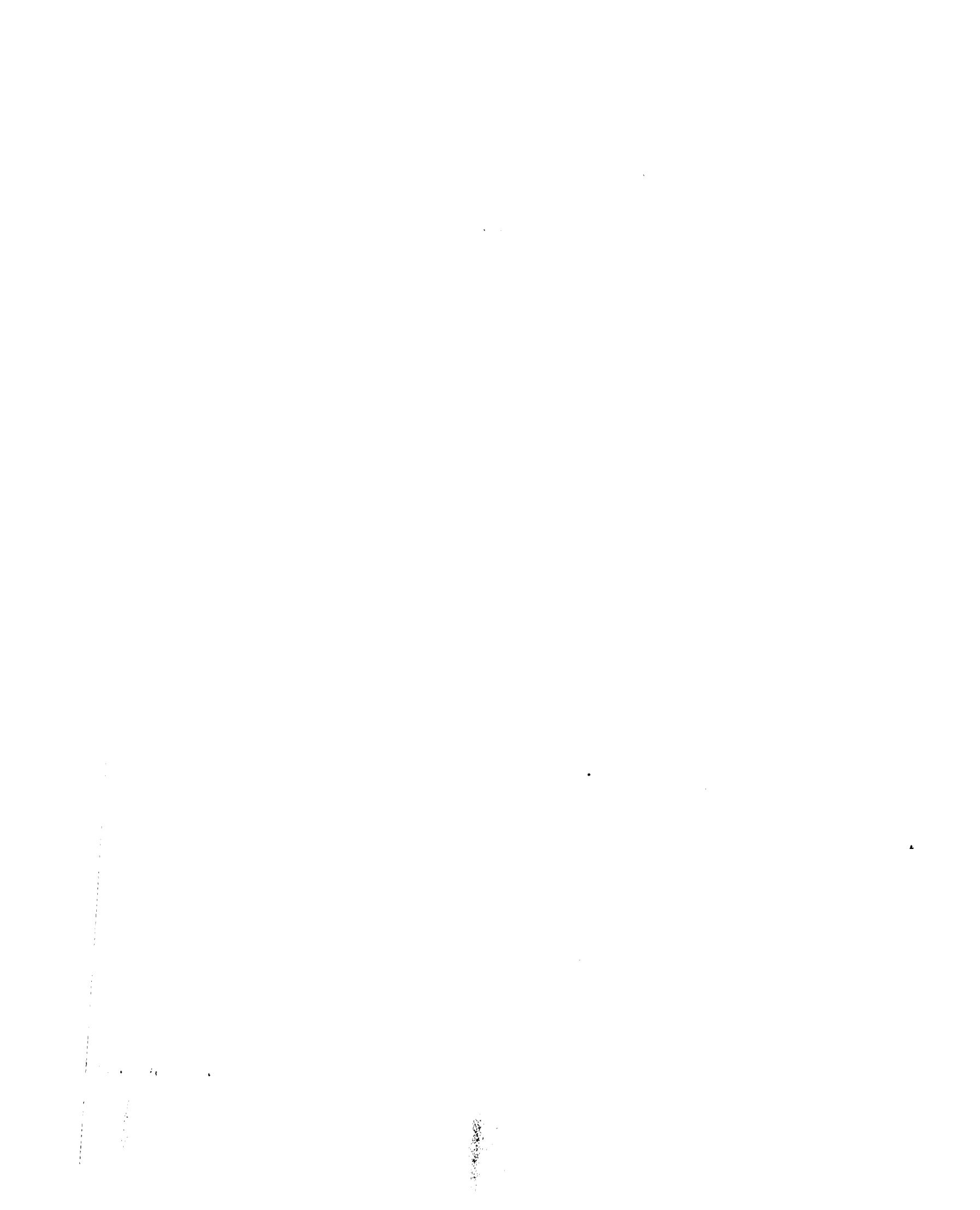


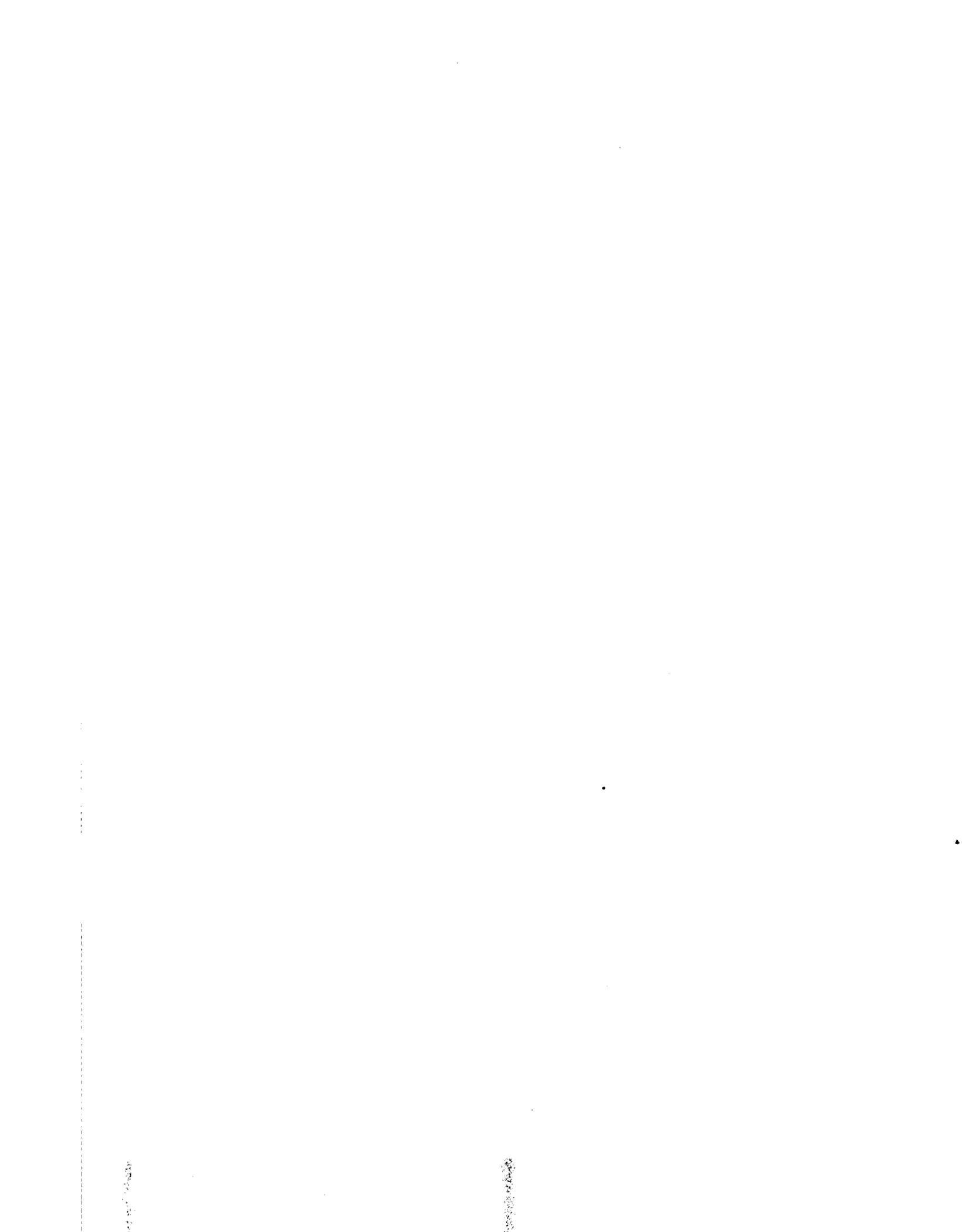
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